DOCUMENT RESUME

ED 289 526 IR 052 245

AUTHOR	Crews, Kenneth D.
TITLE	University Copyright Policies in ARL Libraries. SPEC Kit 138.
INSTITUTION	Association of Research Libraries, Washington, D.C. Office of Management Studies.
PUB DATE	Oct 87
NOTE	137p.; For a SPEC Kit focusing more narrowly on library concerns, see ED 242 338.
AVAILABLE FROM	Association of Research Libraries, Office of Management Studies, 1527 New Hampshire Ave., NW, Washington, DC 20036 ($20.00 per copy; subscriptions are available).
PUB TYPE	Legal/Legislative/Regulatory Materials (090) -- Reports - Research/Technical (143)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Academic Libraries; Computer Software; *Copyrights; Higher Education; *Legal Problems; *Legal Responsibility; Library Surveys; Ownership; *Policy; Reprography; *Research Libraries

ABSTRACT

The product of a detailed study of university copyright policies in Association of Research (ARL) Libraries, this System and Procedures Exchange Center (SPEC) flyer/kit approaches copyright use and ownership policies from the viewpoint of university administrations as well as libraries. A brief introduction discusses policies on use and ownership of materials, the scope of this study, and issues to be considered when developing university policies. The major part of this kit is a collection of topically-arranged groupings of unedited primary source documents submitted by respondents to the survey, including: (1) introductory brochures (University of Colorado and University of California at Davis); (2) comprehensive or general copyright policies (Indiana University, University of Massachusetts, Brigham Young University, and University of Utah); (3) specialized policies (University of Utah, Stanford University, and University of Rochester); (4) general ownership policies (Texas A&M University and University of Washington); and (5) ownership policies for specific materials (University of Delaware and University of Missouri). These materials address such issues as the definition of objectives of a copyright policy, interests of the institutions with respect to copyright applications, and development and implementation of a copyright policy by an institution. A selected reading list of 19 items is also provided. (CGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Maxine Sitts

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

spec

System and Procedures Exchange Center

ORDER FORM

FED. ID #52-0784198-N

THIS ORDER FORM MAY BE USED AS A PROFORMA INVOICE

202-232-8656

***** KITS ARE AVAILABLE BY SUBSCRIPTION, FROM YOUR LIBRARY VENDOR/AGENCY OR DIRECT *****

To order, fill out below and send with **PREPAYMENT*** to: ARL Office of Management Studies, 1527 New Hampshire Ave. NW, Washington, DC 20036. Claims must be made within 90 days. (*ARL library members may be billed. ARL per-Kit cost is $10.00)

PREPAYMENT IS REQUIRED

Purchase Order #: ____________________

Shipping Address: ____________________

____

____

____________________ (ZIP) __________

Date: ___/___/___

OMS Client No.: __________
(see mailing label)

TOTAL NUMBER of Kits ordered: __________

X __________ **$20 per Kit ($25 outside U.S.)**

TOTAL AMOUNT ENCLOSED $ __________

For Internal Use
Date ___/___/___
Postage

____ 138.University Copyright Policies
____ 137.Preservation Guidelines
____ 136.Management Copy Cataloging
____ 135.Job Analysis
____ 134.Planning Mngt. Statistics
____ 133.Optical Discs
____ 132.Library-Scholar Communic.
____ 131.Collection Develop.Organiz.
____ 130.Retrospective Conversion
____ 129.Organization Charts
____ 128.Systems Office Organiz.
____ 127.Interlibrary Loan
____ 126.Automated Library Systems
____ 125.Tech.Services Cost Studies
____ 124.Barcoding of Collections
____ 123.Micro.Software Policies
____ 122.End-User Search Services
____ 121.Bibliographic Instruction
____ 120.Exhibits
____ 119.Catalog Maintenance Online
____ 118.Unionization
____ 117.Gifts and Exchange Function
____ 116.Organizing for Preservation
____ 115.Photocopy Services
____ 114.Binding Operations
____ 113.Preservation Education
____ 111.Coop.Collection Development
____ 110.Local Cataloging Policies
____ 109.Staff Training Automation
____ 108.Strategic Planning
____ 107.University Archives
____ 106.Electronic Mail
____ 105.Nonbibl. Databases
____ 104.Microcomputers
____ 103.Asst./Assc.Director Position
____ 102.Copyright Policies
____ 101.User Studies
____ 100.Collection Security
____ 099.Branch Libraries
____ 097.Building Renovation
____ 096.Online Catalogs
____ 095.Lib.Materials Cost Studies
____ 090.Integrated Lib.Info.Systm
____ 086.Professional Development
____ 085.Personnel Classif.Systems
____ 084.Public Serv.Goals-Objs.
____ 083.Approval Plans
____ 082.Document Delivery Systems
____ 081.Services to Disabled
____ 080.Specialty Positions
____ 079.Internships/Job Exchanges
____ 078.Recruitment-Selection
____ 076.Online Bibliog.Search Servs.
____ 075.Staff Development

SEE BACK

___ 074.Fees for Services
___ 073.External User Servs.
___ 072.Executive Review
___ 070.Preservation Procedures
___ 068.AACR2 Implement.Studies
___ 067.Affirmative Action Progs.
___ 064.Indirect Cost Rates
___ 063.Collective Bargaining
___ 057.Special Collections
___ 056.External Communication
___ 054.Internal Communication
___ 049.Use of Annual Reports
___ 048.External Fund Raising
___ 047.Automated Cataloging
___ 046.Planning Card Catalog
___ 031.Allocation of Resources
___ 029.The Systems Function
___ 020.Manager-Tech.Specialists
___ 019.Staff Associations
___ 008.Collective Bargaining
___ 007.Personnel Classif.Schemes
___ 003.Personnel Organization
___ 001.Organization Charts

* * *

SPEC Kits (ISSN 0160 3582) are available by subscription through subscription services or direct from the publisher. Individual issues cost $20.00, plus $5.00 postage outside the U.S., through distributors or direct. (ARL member price $10.00.) Prepayment is required. If ordering direct, send check payable to "ARL Office of Management Studies" to: SPEC, Office of Management Studies, 1527 New Hampshire Ave., N.W., Washington, D.C. 20036. Order by Kit Number and Title.

spec flyer
Flyer #138-October 1987
OMS
Systems and Procedures Exchange Center
ISSN 0160 3582

UNIVERSITY COPYRIGHT POLICIES IN ARL INSTITUTIONS

EDITOR'S NOTE: This SPEC Flyer/Kit approaches copyright use and ownership policies from the viewpoint of university administrations, as well as libraries. The focus is on entire policies, so the Kit reprints full policies with all details, including general information and appendices. This Kit supplements **SPEC Kit #102, Copyright Policies at ARL Libraries** *(March 1984) which focuses primarily on library policies, and generally arranges them by specific issues, such as interlibrary lending, reserve room copying, and the use of archives and manuscripts.*

Copyright law gives authors—including university faculty members—exclusive rights to publish and use their original works. Such exclusive rights, however, can limit the use of works by others, including librarians needing to duplicate materials for patrons and preservation, faculty members requiring copied articles for classroom distribution, and researchers and students using photocopies for personal study. Individual librarians, professors, and students may find themselves personally liable for infringements. Copyright clearly touches every member of the academic community.

In light of statutory copyright protection, how can libraries, students, and faculty make the numerous copies needed in the course of university activities? The Copyright Revision Act of 1976 gives libraries certain rights to duplicate materials. The Act also allows limited "fair use" of copyrighted works primarily for research and educational purposes.

POLICIES: USE AND OWNERSHIP. Balancing the creator's interests with these limited exemptions gives rise to tremendous complexity in interpreting and applying the law. Indeed, the law alone cannot anticipate every application; private and contractual arrangements can sometimes determine rights and specify permitted actions in detail beyond the statute's terms. Many universities meet these challenges by issuing policies establishing positions with respect to the ownership of newly created works as well as the use of preexisting works.

Use policies specify the extent of photocopying, recording, software duplicating, and other uses permitted at the university. A central administration's policy may govern multiple copies for classroom use and other situations of general concern to the university community. A library policy may focus on photocopying for reserve rooms or interlibrary lending and other issues of particular library interest.

Ownership policies typically describe when the university claims an interest in all or part of the rights to new works. Faculty members traditionally have owned and received royalties from copyrights to books and articles. But newer formats, such as video tapes and computer programs, may involve expensive university resources and may yield substantial revenue from the public market. Faced with these economics, many policies now claim ownership rights for the university.

All of these copyright policies can affect the creation and use of protected works and thus affect the information needs of the entire university community. The two types of policies should be examined together: **Ownership** and **use** are complementary aspects of intellectual property, and the policies together can clearly describe the university's overall posture on copyright. Moreover, many policies that give the university an ownership interest in copyrights also specify some permitted uses of those works. Thus, the library or researcher working with materials owned by the university may be subject to special guidelines for permissible uses.

STUDY SCOPE AND ISSUES. To begin a detailed study of university copyright policies, we requested copies of relevant policies or guidelines from library directors and legal counsel offices at the 93 American universities belonging to the Association of Research Libraries. We sent the initial requests in October 1986, and by June 1987 we had received more than 150 responses from all but two of the universities. Responses came from 78 of the libraries, as well

The Systems and Procedures Exchange Center (SPEC) is operated by the
Association of Research Libraries, Office of Management Studies,
1527 New Hampshire Avenue, N.W., Washington, D.C. 20036. Telephone (202) 232-8656.

as from legal counsel, media centers, research directors, and other university offices. Many responses indicated that copyright policies were being reviewed and revised in light of changing needs. Indeed, materials received from over one-fourth of the responding libraries indicated some form of policy or guideline change since the beginning of 1984.

Several respondents identified computer software and databases as presenting the most immediately troublesome copyright issues. When does the law allow duplicating a software program? Can the library lend software as it lends books? Can libraries and researchers download from online databases? If a professor writes a program on a university computer, who owns the copyright and who has rights to use the new work? While these issues may represent some of the most recent copyright challenges for libraries and universities, existing policies have not fully resolved many fundamental copyright problems.

DEVELOPMENT OF UNIVERSITY POLICIES. University and library copyright policies must deal with numerous details and legal questions regarding specific materials and uses. In developing any policy, however, planners should consider at least three general sets of issues:

1. *What are the objectives of the copyright policy?* Some policies are merely tutorial. They describe the law and attempt generally to explain its significance. Other policies are interpretive; they attempt to resolve problems and uncertainties in the law and offer specific guidance for users. Planners must also decide whether the policy is for strictly administrative use or may be used by researchers and library patrons. Perhaps the most troublesome "objective" issue is determining whose interests to serve. Some policies may address academic needs, while other policies only seek to prevent the library's or university's liability for infringements.

2. *What are the institution's interests with respect to applications of copyright?* A university or library may logically determine that a "liberal" interpretation of fair use and other permitted uses of copyrighted works might best promote the institution's educational and research goals. But a conservative interpretation may help avoid potential lawsuits and infringement liabilities. On the other hand, a university or library may circumvent these dilemmas by adopting a neutral position or no policy at all. Model policies, and the interests they promote, have greatly influenced copyright guidelines. Indeed, the guidelines for classroom copying from the 1976 Copyright Act legislative history appear frequently as standards for photocopying by faculty, staff, and librarians. The American Library Association's model policy has strong advantages, but it lacks the imprimatur of law, and only a few ARL universities have adopted it.

3. *How can an institution develop and implement a policy?* Libraries, media centers, film archives, computer labs, and many other departments within a university may have a need for copyright policies. The first task is to identify needs and to analyze applicable law. Planners must be acutely aware, however, that copyright analysis is not merely a descriptive or mechanical process. Policy development is legal interpretation combined with a view toward serving broader concerns of the library or university. Finally, any policy must be thoroughly implemented to be meaningful. Planners must make the policy widely available, users must be instructed on its meaning and significance, and the institution must be continuously prepared to answer questions and offer guidance. Even the most thorough guidelines cannot anticipate all needs.

The SPEC Kit on University Copyright Policies (#138, October 1987) includes two introductory brochures, four comprehensive or general copyright policies, three specialized policies (performance/display, software, music), two general ownership policies, and two ownership policies for specific materials (computer software, university-sponsored educational materials). A selected reading list is included. Neither the documents in the Kit nor this Flyer represent ARL policy or opinion.

* * *

This flyer and kit was prepared by Kenneth D. Crews, Member of the California Bar and Ph.D. student in the UCLA Graduate School of Library and Information Science, as part of the OMS Collaborative Research Writing Program.

SPEC Flyer copyright© 1987 by Association of Research Libraries, Office of Management Studies. This SPEC Flyer may not be reproduced in any form without permission from the publisher.

SPEC Kits (ISSN 0160 3582) are available by subscription through subscription services or direct from the publisher. Individual issues cost $20.00, plus $5.00 postage outside the U.S. (ARL member cost is $10.00.) Prepayment is required. If ordering direct, send check payable to "ARL Office of Management Studies" to: SPEC, Office of Management Studies, 1527 New Hampshire Ave., N.W., Washington, D.C. 20036. Order by Kit Number and Title.

spec

Table of Contents

OMS

System and Procedures Exchange Center

ISSN 0160 3582

University Copyright Policies
in ARL Libraries
Kit #138
October 1987

PREFACE 1

INTRODUCTORY BROCHURES

University of Colorado — "A Scholar's Guide to the Law of Copyright," 1982. [General introductory booklet] 2

Univ. of California, Davis — "A practical guide to Copyrights and Copywrongs," 1986 [Basic policy guidelines for users] 6

COMPREHENSIVE OR GENERAL COPYRIGHT POLICIES

Indiana University — "Copyright Information and Guidelines," 1983. [Comprehensive library policy] 10

Univ. of Massachusetts — "Guidelines for Use of Copyrighted Materials," 1986. [University-wide policy based on both the ALA model policy and the legislative history guidelines] 39

Brigham Young Univ. — "Draft Policy Statement: Photocopying for Teaching and Research," 1987. [Concise university policy] 55

University of Utah — "Copyright Policy: Copying of Copyrighted Works," 1985. [University policy based on legislative-history guidelines and statutory language] 57

SPECIALIZED POLICIES

University of Utah — "Copyright Policy: Performance or Display of Copyrighted Works," 1984. 70

Stanford University — "Copying of Computer Software," and "Guidelines on software copying," 1987. 79

University of Rochester — "Sibley Music Library Guidelines for Placement of Copied Materials on Reserve," 1984. 82

GENERAL OWNERSHIP POLICIES

Texas A&M University "Copyrights," 1985. [University policy on ownership of newly created works, with detailed explanations]. 84

University of Washington "Copyright Policy," 1983. [University policy on ownership of works; standard policy structure with many detailed provisions]. 96

OWNERSHIP POLICIES FOR SPECIFIC MATERIALS

University of Delaware "University of Delaware Information packet on Computer Software," 1985. [University policy and procedures guide on the ownership of software]. 99

University of Missouri "Copyright Regulations: University-Sponsored Educational Materials," 1984. [University policy on ownership and use of specific types of new works]. 113

SELECTED READING LIST 117

USES OF SPEC KITS

The Systems and Procedures Exchange Center (SPEC) is a clearinghouse operated by the Association of Research Libraries, Office of Management Studies that provides a central source of timely information and materials on the management and operations of large academic and research libraries. It facilitates the exchange of knowledge and documents through SPEC Kits, which are distributed ten times each year to ARL members and other interested libraries. The Kits include topically-arranged groupings of unedited primary source documents - selected for their value to administrators and decision-makers - that illustrate a wide range of alternative approaches to specfic issues.

Kit documents come from general membership surveys and from selected libraries contacted directly by SPEC, and most Kits are produced within six months of surveys. The documents' value comes from their variety of ideas, methods, and solutions. They are not viewed as finished products, but rather as points of departure for a library's planning efforts and as stimulants to innovative approaches to problem-solving. As such, Kits do not present answers or prescriptions for any one library; instead they illustrate how selected ARL members are planning for or dealing with particular issues. The worth of any one Kit to a particular library will depend upon the specific topic covered and the library's stage of development in that area.

Materials are selected according to the following criteria:

- Presents an approach of potential value to administrators and decision-makers
- Timely, and dealing directly with the topic under consideration
- Probability of application of ideas or thinking to other library situations
- Illustrative of actual practice, rather than theoretical
- Understandable, readable communication

All together, the materials should provide a range of alternative approaches that complement each other, provide variety, and stimulate comparison and contrast.

Libraries can take advantage of the Kit compilations in a number of ways. Administrators can evaluate the assumptions, methods, and results of other libraries' approaches; compare and contrast them; and use the learnings in their own situations. Library staff members can use the kits as professional development and current awareness tools. Committees and task forces can use them to begin a review of current practices. And the Kits can identify other persons or places to contact for further information. Back-up files in the SPEC office also are available for loan to member libraries. In addition, SPEC will conduct on-demand surveys or analyses geared specifically for a single library.

EVALUATION

Kit Title/Number ______________________________

1. Which uses did the library make of this Kit?

2. Please indicate how useful the Kit was for these purposes.

☐ Very Useful ☐ Quite Useful ☐ Somewhat Useful ☐ Not Useful

3. Do you have suggestions for this Kit or for future Kits?

(optional) NAME ______________________________

LIBRARY ______________________________

PHONE ______________________________

Please return this form to the SPEC Center, OMS/ARL, 1527 New Hampshire Ave., N.W., Washington, DC 20036

1/82

spec
System and Procedures Exchange Center
OMS
Office of Management Studies, Association of Research Libraries
1527 New Hampshire Avenue, N.W., Washington, D.C. 20036 • 202-232-8656

PREFACE

The preparation of this SPEC Kit and research on university copyright policies are part of a comprehensive study of the uses and nature of information resources at research universities, with special attention to the university's strategic planning concerns. Under funding from the Council on Library Resources, the study is based at the UCLA Graduate School of Library and Information Science ("GSLIS"). GSLIS Dean Robert M. Hayes is the project's principal investigator. One critical strategic planning issue is the effect of copyright on academic interests in the development and uses of information resources. Copyright is clearly important for libraries and other members of the university community.

The study of copyright policies is the research of Kenneth D. Crews, an attorney and Ph.D. student in GSLIS. In preparing this SPEC Kit, the researcher would like to acknowledge the assistance and advice of Dean Hayes, Professor John S. Wiley, Jr. of the UCLA School of Law, Maxine Sitts of the ARL Office of Management Studies, and all university officials who responded generously to the requests for copyright policies and who granted permission to reproduce certain policies in this Kit.

This SPEC Kit supplements SPEC Kit #102, Copyright Policies at ARL Libraries (March 1984). The earlier Kit focuses primarily on library policies, and it generally arranges them by specific issues, such as interlibrary lending, reserve room copying, and the use of archives and manuscripts. The present Kit includes use and ownership policies issued by university administrators as well as by libraries. Moreover, the focus is on entire policies, so this Kit reprints full policies with all details, including general information and appendices.

University copyright policies will also be the subject of a forthcoming publication in the ARL Occasional Papers Series which will describe the numerous issues that planners might review when formulating a copyright policy. Those issues will reflect the content of copyright policies received from ARL universities.

The SPEC office in Washington, D.C. is retaining copies of all policies received from the universities in connection with this project. Interested persons may contact the Office of Management Studies for further details about examining the materials.

---Kenneth D. Crews
October 1987

Introductory Brochures

A
Scholar's
Guide
to the
Law of
Copyright

University of
Colorado,
Boulder

A SCHOLAR'S GUIDE TO THE LAW OF COPYRIGHT

Who Owns Copyright

Faculty, staff, and students who write papers are actually creating "original works of authorship" for which copyright protection exists. Only the author, or those deriving their rights through the author,* can rightfully claim copyright. Your literary endeavor immediately becomes your property and nothing further, such as publication with a copyright notice or registration in the copyright office, is required to secure copyright (see sections in copyright notice and copyright registration). Copyright is secured automatically when the "work" is created. The work is "created" when it is fixed in a tangible medium for the first time. This "tangible medium" may be read or visually perceived either directly or with the aid of a machine or device and includes books, manuscripts, sheet music, film, videotape, or microfilm.

You, as the author and owner of the copyright, have certain exclusive rights to reproduce copies of the copyrighted work, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work. Distribution may be by sale or other transfer of ownership or by rental, lease, or lending.

Before anyone can copy your work, he/she must obtain your permission. Failure to obtain such permission would constitute an infringement of copyright and you may seek damages and other sanctions against such unauthorized use.

Limitations to Exclusive Rights

However, there are certain limitations on these exclusive rights.

The law allows libraries and archives to reproduce copyrighted material without permission, under certain conditions.

"Fair use" of portions of a copyrighted work is permitted for such purposes as criticism, comment, news reporting, teaching, *scholarship, and research.** The doctrine of "fair use" significantly restricts the privileges which the owner of a copyright may enjoy. "Fair use" is a right of someone other than the owner of a copyright to use the copyrighted material in a reasonable manner without the consent of the owner.

The "fair use" right arises from those same constitutional laws and policies as the law of copyright itself—"To Promote the Progress of the Sciences and the Useful Arts." Therefore, the copyright owner's interest in financial return for use of his/her work must at times take a back seat to the greater public interest in the free dissemination of news and information.

There is no shortcut to determine whether or not a use of a copyrighted work is fair. The line between a fair use and an infringement depends upon the balancing of several factors:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

Generally, a somewhat greater amount of copying of copyrighted works is permitted of scholarly, technical, or scientific works. This is a balancing of the benefit to the public from an expansion of knowledge, and the author's right to receive compensation for his work. Where these two interests are in conflict, the benefit of expanding knowledge has weight in determining the amount that may be used without permission, and normally takes precedence over the author's right. However, the contention of fair use is weakened if the finished product produces commercial gain for the person doing the copying.

You, as the author of a copyrighted work, will have greater latitude in using the copyrighted material of others because you are engaging in scholarship and research of a noncommercial nature. The need to obtain permission is, therefore, not as essential as with commercial users. However, if you plan to use extensive quotations of a copyrighted work, ask for permission, using forms available from the Graduate School. Be sure that your notetaking reflects whether you are copying exact quotes or extensively paraphrasing another's statements. In preparing such notes, it is important to use the exact wording given by the copyright owners in their letters of permission. Be as consistent as you can in compiling the source notes; you will be confined to the language of the letters of permission. If no wording has been specified, include the author's name, article title, book title, publisher, location, year, page or other reference, and the notation "Reprinted by permission." For example:

---

*For example, an employer who hires an author to write material as part of the employment contract is the copyright owner.

*Faculty members should refer to the section on Copyright in the University of Colorado Procedures Manual.

> From *Material and Energy Balances,* A. R. Schmidt and H. L. List, copyright ©1962 by Prentice-Hall Inc., Englewood Cliffs, N.J., pp. 10-12. Reprinted by permission.

Obviously, if the material from which you are planning to quote is not copyrighted or the copyright has long expired, no permission is required, although good scholarship would require an appropriate recognition of the source. Such works are often referred to as being in the "public domain." For example, the works of William Shakespeare are free from copyright and, hence, open to use by anyone.

The Copyright Notice

Remember, you own the copyright from the moment of "creation." But if you, as the author of a copyrighted work, wish to distribute or "publish" your writing, you will need to place a notice of copyright on all publicly distributed copies in order to secure the exclusive rights referred to above. This is your responsibility. It does not require advance permission from or registration with the Copyright Office.

"Publishing" or "publication" has special meaning in the law of copyright. Normally we think of a "publication" as a work that has been reduced to writing in some printed format such as a book or an article in a magazine or journal. "Publication," in the law of copyright, is the distribution of copies of a work to the public by sale or other transfer of ownership or by rental, lease, or lending. Distribution of copies to a group of persons for purposes of further distribution constitutes a "publication."

The notice for your copies should contain the following three elements:

- the symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.";
- the year of first publication of the work; and
- the name of the owner of copyright in the work.

Frequently both the symbol © (the letter C in a circle) *and* the word "copyright" are used together with an additional notation that all rights are reserved, for example—

Copyright ©1981
Jane Sarah Doe
All rights reserved

Although such notice contains more than is actually required by law, it is acceptable.

The notice is usually placed on the title page or on the next page following the title page.

Copyright Registration

In general, copyright registration is a legal formality intended to make a public record of the facts of a particular copyright. However, registration is not a condition of copyright protection.

Even though registration is not generally a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- Registration is necessary before any infringement suits may be filed in court.
- If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.

- Should your work be infringed, the legal fees in a lawsuit can sometimes be expensive and it also can be difficult to prove economic injury. However, if registration is made within three months after publication of your work, or before the infringement began, the court may award you reasonable attorney's fees and "statutory" damages (an amount, within certain ranges, the court considers just).

Registration may be made at any time within the life of the copyright which, generally speaking, is the life of the author plus 50 years after the author's death.

Mandatory Deposit

Although copyright registration is not required, *works published with a notice of copyright* are subject to a mandatory deposit requirement. The copyright owner is required to submit two copies to the Copyright Office (for use of the Library of Congress) within three months of publication. Failure to make the deposit can give rise to fines and other penalties but does not affect copyright protection.

Masters' Theses

If you are a master's degree candidate and you wish to register your work, send the following three elements to the Copyright Office *in the same envelope or package:*

1. A properly completed application form which is available in the Graduate School.
2. A fee of $10.
3. A copy of the work being registered. The copy requirements will vary in particular situations. The general requirements are as follows:
    - If the work is unpublished, one complete copy.
    - If the work was first published in the U.S. on or after January 1, 1978, two complete copies of the best edition.

Doctoral Dissertations

All doctoral dissertations submitted to the University of Colorado are submitted by the University to University Microfilms International (UMI) which copies the dissertation on microfilm. The candidate is required to furnish the company with an abstract of 350 words or less which the company publishes in *Dissertation Abstracts International.*

UMI receives the exclusive right to reproduce and sell copies of the dissertation in *microform* and in paper copies reproduced from *microform.* You should include the notice on the copy you send UMI if you wish copyright protection to apply.

If you wish, you may have UMI handle copyright registration by completing the lower portion of the Dissertation Agreement entitled, "Authorization to Apply for Registration of My Claim to Copyright." Your signature and a fee of $20 are required; form and fee are submitted with the final copy of your dissertation to the Graduate School thesis advisor. UMI will file for registration, pay the registration fee, and deposit your work with the Copyright Office.

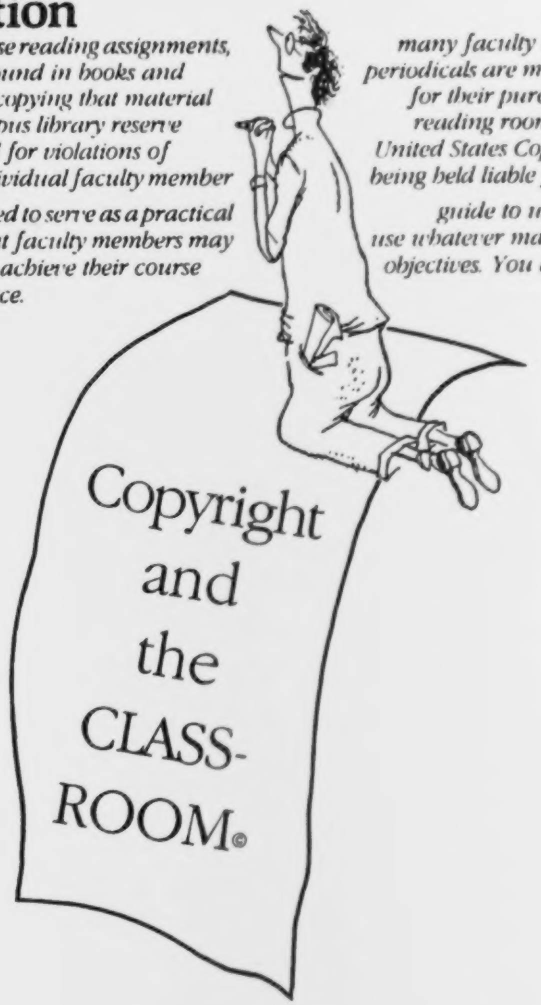
* * * *

Prepared by the Graduate School, Office of University Counsel, and Publications Service of the University of Colorado, Boulder. March 1982.

Introduction

In preparing course reading assignments, many faculty members find that primary scholarly works found in books and periodicals are most efficiently distributed to students by photocopying that material for their purchase or by placing multiple copies in the campus library reserve reading rooms. However, these practices raise the potential for violations of United States Copyright Law and may result in the University and the individual faculty member being held liable for copyright infringement.

This brief pamphlet is designed to serve as a practical guide to using copyright materials for instructional purposes so that faculty members may use whatever materials they believe are most appropriate to helping them achieve their course objectives. You are encouraged to keep this pamphlet for future reference.



A practical guide to COPYRIGHTS *and* COPYWRONGS

0021 (2500) JD 6/86

This flyer was prepared by the Office of the Vice Chancellor—Academic Affairs, the University Librarian's Office, Shields Library, and the Office of Business Contracts and Analysis. It has been reviewed and approved by the Academic Senate Library Committee as a guide to compliance with copyright regulations as presently interpreted by the University.

1. What is copyright?

Copyright is the exclusive legal right to publish, sell, and reproduce literary, musical, and artistic works. In the United States, the rights of copyright holders are provided for in the 1976 Copyright Act (Title 17, United States Code). Infringement of copyright is both illegal and unethical.

2. Does copyright mean that I can never reproduce printed materials for instructional purposes?

No! The Copyright Law authorizes faculty members to reproduce some copyrighted materials without having to seek individual permission. These include:

- published works that are not copyrighted;
- published works whose copyrights have expired (in general, materials published in the U.S. more than 75 years ago; check with the Business Contracts Office (2 2426) to be sure);
- most publications of the U.S. Government (check the inside cover page for a copyright notice);
- journals that permit reproduction of their articles for instructional purposes; a notice to this effect is usually found on the inside front cover of the journal;
- journals for which the library has received a blanket permission to use copyrighted materials for instructional purposes. The library will distribute a list of these journals annually;
- journals that offer copyright permission through the Copyright Clearance Center (CCC), a service which charges a fee that the library will pay. Notice of a copyrighted item's registration with the CCC appears either on the inside front cover of the journal or on the title page of an article. If you will send a copy of an article registered with the CCC along with a copy of the CCC statement in the journal to the reserve book room staff, the library will assume responsibility for the paperwork and the payment of fees.

Copyright restrictions also do not apply to multiple "original reprints" obtained from the publisher. Finally, the Copyright Law also allows limited reproduction of copyrighted materials if the law's criteria for educational "fair use" are satisfied.

3. What are the criteria for "fair use?"

In determining whether the use of copyrighted materials is a "fair use," the law requires consideration of four factors:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and,
- the effect of the use on the potential market for or value of the copyrighted work.

4. These criteria seem awfully vague. Can't you provide more specific guidance?

There is no automatic formula for determining whether a use of copyrighted materials will be viewed by a court to constitute "fair use." However, you should be in compliance with the law's provisions if:

- the materials are not used repeatedly (i.e., you have not used them before and you do not intend to use them in the future);
- you make no more than one copy per student to distribute in class;
- you place the copyright notice on each copy distributed;
- students are not assessed a fee beyond the actual cost of reproduction;
- in the case of books and other lengthy materials, the portion copied is selective and sparing in comparison to the work as a whole; if you plan to use books from which extensive portions will be needed, the library is prepared to purchase multiple copies for reserve use;
- no attempt is made to create or replace an existing anthology or other collective work.

5. I had heard that articles or monographs published as a result of research conducted under a federal contract or with federal funds were also not subject to copyright restrictions. Is that true?

No! Contrary to a widely-circulating myth, the source of funding for scholarly research is not related to any protections it may enjoy under copyright law.

6. What about out-of-print books which are still covered by copyright?

If you need a book for reserve use, even if that book is out of print, the library will make every attempt to obtain it. You should list the item on your reserve list as usual, noting that it is out of print and providing standard bibliographic information so that the library can begin to search for the book through out of print or reprint sources. If you have submitted an order request, it is legitimate to place a photocopy on reserve; please send it with your list if you have one.

7. What should I do if I want to use an item repeatedly several times a year or in successive years?

For copyrighted items that you plan to use on a regular basis, you will need to seek permission of the copyright holder unless the library has already obtained a blanket permission. Permission for continued use for educational purposes is normally granted without charge.

8. If the article or book I wish to use is one for which I must seek permission (i.e., not covered by questions 2-4 above), how do I go about obtaining that permission?

Your departmental staff can assist you using the campus procedures specified in the UC Davis Policy and Procedure Manual, Section 210-72 which provides, among other things, a sample letter to be used to request permission. You will need to provide them with the author and title of the article or book, the name of the journal or publisher, and the date of publication. Your staff will also need to obtain the address of the publisher, which may be found on the inside cover of the journal, or in *Books in Print* or *Ulrich's International Periodicals Directory*, both available at any library reference desk. The Business Contracts Office (2-2426) can provide assistance to your departmental staff and can provide advice when you are in doubt about whether you need to seek permission.

9. Do I have to wait until I receive an answer from the copyright holder before I use this material?

No. As with material you seek to use only once, material that you intend to be used repeatedly may be placed on reserve for one quarter until you receive permission.

10. Assuming that I have obtained permission or that the material I seek to use falls within the range of permitted uses (i.e. questions 2-4, above), how do I go about getting multiple copies made for distribution to my students or for placement in the library reserve reading rooms.?

If you will supply a copy of each item for which multiple copies are required to the reserve book room along with your reserve reading list, the library will make the required copies and recharge your department for the cost of those copies. Alternatively, your department can arrange for multiple copies to be made through Repro Graphics or an off campus copy service and delivered to the reserve room. The library will accept a maximum of 3 copies of each item for classes of 50 or fewer students, with an additional copy allowed for each group of 20 additional students to a maximum of 10 copies per item.

If you ultilize the copying services of the library or of Repro Graphics, you will be asked to sign a form indicating that you have already obtained permission to use the copyrighted material or that your planned use of the material is consistent with the "fair use" concept. And regardless of where the copies are made, the reserve room will require you to supply a signed form certifying your compliance with the copyright law before accepting items for reserve.

11. Once I have my copies, how do I get them placed in the reserve reading rooms?

You may arrange for your materials to be placed on reserve simply by sending them to the appropriate reserve book room, along with your reserve reading list, the appropriate permission statements, and a signed form certifying your compliance with the copyright law. Copies of this form should be available in your department or can be obtained upon request from the reserve room staff. Please note that you, the faculty member, must sign this form; departmental staff signatures are not acceptable.

12. It seems like there is a lot of "red tape" connected with obtaining a copyright permission. I'm too busy to bother with all of this bureaucracy. What happens if I just go ahead and use the materials without the appropriate permissions?

Without the appropriate permissions, University reproduction facilities will not be able to accept the materials you want copied. Without the appropriate permissions, the library reserve rooms will not be able to accept your multiple copies for students to read. Assuming that you can find some other way to have copyrighted materials copied and distributed to students, you need to know that the University may not be able to serve as your legal representative should a law suit be initiated alleging copyright infringement. It is in your own best interest, therefore, to follow University procedures and to use University facilities to help you make a "good faith" attempt to comply with the copyright law.

13. Where can I go for help if I have questions about copyright law?

The best place to call is the Office of Business Contracts and Analysis (2-2426).

14. Who is available in the library to assist me with reserve room readings and these matters connected with copyright?

Questions should be directed to the Reserve Supervisor at the library which houses the materials for your discipline:

Carlson Health Sciences Library	2-6703
Physical Sciences Library	2-2283
Shields Library	2-2760

Comprehensive or General Copyright Policies

COPYRIGHT INFORMATION AND GUIDELINES

INDIANA UNIVERSITY LIBRARIES

AUGUST 15, 1983

CONTENTS

SOME BASIC FACTS ABOUT THE COPYRIGHT LAW

What is Copyright? 1
Who Can Claim Copyright? 1
What Works are Protected? 1
How to Secure a Copyright. 1
Publication. 2
Notice of Copyright. 2
Duration 2-3
Fair Use 3
Computer Software Act of 1980. 3
International Copyright Protection 3

COPYRIGHT POLICIES OF THE INDIANA UNIVERSITY LIBRARIES

Interlibrary Loan 4
Reserves. 5
Photoduplication and Microform Copying Services
    Books and Periodicals. 6-7
    Theses and Dissertations 7
    Unpublished Works. 7
Media 8
Musical Works 9
Computer Software 9
Unsupervised Photocopying Machines. 10

BIBLIOGRAPHY OF SELECTED TITLES ON COPYRIGHT IN THE INDIANA UNIVERSITY LIBRARIES 11-12

APPENDIX A. Warning Concerning Copyright Restrictions 13

APPENDIX B. Reserves Form 14

APPENDIX C. Media Purchase Form 15

APPENDIX D. Media 16

APPENDIX E. Permission to Copy Form 17

APPENDIX F. Library Photoreproduction Order Forms 18

APPENDIX G. Guidelines

1. Classroom Copying 19-21
2. Interlibrary Loan, CONTU. 22
3. Interlibrary Loan, Record Maintenance 23-24
4. Music 25
5. Copying Copyrighted Books 26-27

SOME BASIC FACTS ABOUT THE COPYRIGHT LAW OF 1976

(The following material is excerpted from
Copyright Office Circulars R1, R21, and R99)

WHAT COPYRIGHT IS

Copyright is a form of protection provided by the laws of the United Sates (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.

WHO CAN CLAIM COPYRIGHT

Copyright protection subsists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their right through the author can rightfully claim copyright. Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright.

WHAT WORKS ARE PROTECTED

Copyright protection exists for "original works of authorship" when they become fixed in a tangible form of expression. The fixation does not need to be directly perceptible, so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

(1) literary works,
(2) musical works, including any accompanying words;
(3) dramatic works, including any accompanying music;
(4) pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works;
(7) sound recordings.

This list is illustrative and is not meant to exhaust the categories of copyrightable works.

HOW TO SECURE A COPYRIGHT

The way in which copyright protection is secured under the present law is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright under the present law, unlike the previous law, which required either publication with the copyright notice or registration in the Copyright Office. Under the present law, copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time.

PUBLICATION

The Copyright Act defines publication as follows: "Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

Publication is an important concept in the copyright law because upon publication, several significant consequences follow. Among these are:

> When a work is published, all published copies should bear a notice of copyright.
>
> Works that are published with notice of copyright in the United States are subject to mandatory deposit with the Library of Congress.

NOTICE OF COPYRIGHT

When a work is published under the authority of the copyright owner, a notice of copyright should be placed on all publicly distributed copies and on all publicly distributed phonorecords or sound recordings. The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

The notice for visually perceptible copies should contain all of the following three elements:

1. The symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr."
2. The year of first publication of the work.
3. The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 1982 John Doe

DURATION

For works already under statutory protection, the new law retains the present term of copyright of 28 years from first publication (or from registration in some cases), renewable by certain persons for a second period of protection, but it increases the length of the second period to 47 years. Copyrights in their first term must still be renewed to receive the full new maximum term of 75 years, but copyrights in their second term between December 31, 1976, and December 31, 1977, are automatically extended up to the maximum of 75 years without the need for further renewal.

For works created after January 1, 1978, the new law provides a term lasting for the author's life, plus an additional 50 years after the author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the new term will be 75 years from publication or 100 years from creation, which is shorter.

DURATION (cont.)

For unpublished works that are already in existence on January 1, 1978, but that are not protected by statutory copyright and have not yet gone into the public domain, the new Act will generally provide automatic Federal copyright protection for the same life-plus-50 or 75/100-year terms prescribed for new works.

The new Act does not restore copyright protection for any work that has gone into the public domain.

FAIR USE

The new law adds a provision to the statute specifically recognizing the principle of "fair use" as a limitation on the exclusive rights of copyright owners, and indicates factors to be considered in determining whether particular uses fall within this category.

The courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. These criteria have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a while; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

The statement of fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless variety of situations and combination of circumstances that can rise in particular cases precludes the formulation of exact rules in the statute. (See Agreement on Guidelines for Classroom Copying in Not-for-Profit Education Institutions with Respect to Books and Periodicals in Appendix G.)

COMPUTER SOFTWARE ACT OF 1980

On December 12, 1980, President Carter signed the "Computer Software Act of 1980" into law, thereby amending sections 101 and 117 of the 1976 Copyright Act to contain a specific definition of computer programs and to clarify the extent of the protection for computer software.

INTERNATIONAL COPYRIGHT PROTECTION

The United States is a member of the Universal Copyright Convention (the UCC), which came into force on September 16, 1955. Generally, a work by a national or domiciliary of a country that is a member of the UCC or a work first published in a UCC country may claim protection under the UCC. If the work bears the notice of copyright in the form and position specified by the UCC, this notice will satisfy and substitute for any other formalities a UCC member country would otherwise impose as a condition of copyright. A UCC notice should consist of the symbol © accompanied by the name of the copyright proprietor and the year of first publication of work. (For a list of countries which maintain copyright relations with the United States, see Copyright Office Circular R38a in our Government Publications Department.)

Interlibrary Loan

Copying for interlibrary loan purposes is authorized by the new law to the extent that libraries receiving copies do not do so "in such aggregate quantities as to substitute for a subscription to or purchase of such work." Guidelines were adopted by Congress during its enactment of the Copyright Act, known as the CONTU Guidelines (see Appendix G). These guidelines provide, essentially, that copying for interlibrary loans is permissible

(1) If no more than five requests for copies of periodical articles from any given periodical are filled for a requesting library during a calendar year, with respect to articles less than five years old. (There is no provision covering the copying of older articles);

(2) If no more than five requests for copies of excerpts of any given work are filled for a requesting library within a calendar year; and

(3) If requesting libraries state that their requests comply with the Act and keep records of their requests for three years (See ALA Record Maintenance and Retention Guidelines for Interlibrary Loan Departments, Appendix G.)

When copying is not permissible under the copyright law, permission to copy must be obtained, or, in some cases, a royalty fee paid through a clearinghouse. A letter requesting permission to copy is to be found in Appendix E.

All copies made by interlibrary loan units must bear the copyright notice with the following text: "Notice: This material may be protected by copyright law (Title 17 U.S. Code)." This notice may be stamped on the first page of the copied item or it may be printed by means of an acetate strip which fits across a photocopy machine. The type shall be large enough so as to be clearly visible, legible, and comprehensible.

Order forms filled out by patrons for interlibrary loan requests shall include an Order Warning of Copyright. This notice is found in Appendix A. In addition, this notice must be displayed where orders are accepted for interlibrary loan.

Reserves

1. Each library may place on reserve, a single photocopy of one article in a periodical issue or one chapter in a book. Individual libraries may place limits on the length of items copied.

2. Reserve may house additional copies provided by faculty members, so long as the responsible faculty member assures the library in writing that the copies conform to the copyright law, or that permission for copying has been obtained.

3. Copies of copyrighted materials may not be retained on reserve more than a single semester for any member of the faculty unless the faculty member assures the library that permission to reproduce and distribute copies in this fashion has been granted by the holder of copyright or that such reproduction and distribution conforms to the copyright law.

4. The following notice of copyright must be placed on all photocopied materials housed by the libraries: "Notice: This material may be protected by copyright law (Title 17 U.S. Code)."

5. Application forms filled out by faculty members for duplications of materials to be placed on reserve must bear an Order Warning of Coyright. (See Appendix A)

6. A Display Warning of Copyright must be posted wherever reserve request forms are accepted. (See Appendix A)

7. No "consumable" materials (eg. workbooks or standardized tests) may be photocopied for placement on reserve. Photocopies of these materials may not be accepted by the libraries for placement on reserve.

PHOTODUPLICATION AND MICROFORM COPYING SERVICES

Books and Periodicals

The Indiana University Libraries do not copy entire copyrighted books, periodicals or microforms except in the case of "fair use" (see page 3). Copying a single article from a periodical, or a chapter from a book, would be considered fair use. Otherwise, permission to copy entire copyrighted works or proof that a copyright has expired is to be secured by the requester. Permission to copy can often be obtained by writing directly to the holder of the copyright, usually the publisher. A sample letter is in Appendix E. To determine if the copyright has expired, patrons can write to the Copyright Division, Library of Congress, and have the status determined. The Government Publications Department in the Bloomington Main Library has a Copyright Office Publication, "How to Investigate the Copyright Status of a Work," R22, which outlines the information needed by the Copyright Office to make a search. Patrons can also consult the Catalog of Copyright Entries (see page 11), to determine if a work has entered the public domain.

ALA Guidelines for seeking or making a copy of an entire copyrighted work can be found in Appendix G. In addition, some guidelines for determining whether a work is protected by copyright are:

1. Works copyrighted in the U.S. before September 19, 1906, are in the public domain.
2. Works published before January 1, 1978, without a copyright notice are probably in the public domain.
3. Works copyrighted before January 1, 1978, must be renewed during the twenty-eighth year to receive its full term of protection -- seventy-five years.
4. Works by the U.S. government are published without copyright notice and are in the public domain.

For the purpose of replacement, the library will copy entire copyrighted works if it has been determined, after a reasonable effort, that an unused replacement cannot be obtained at a fair price. The library may copy an entire copyrighted work for a user if it has been determined that a copy cannot be obtained at a fair price. The requester must present evidence of this before copying can be done. See Appendix F for sample order forms for photoreproduction.

All copies made for a patron shall bear a notice with the following text: "Notice: This material may be protected by copyright law (Title 17 U.S. Code)." This notice may be stamped on the first page of the copied item or it may be printed by means of an acetate strip which fits across a photocopy machine. The type shall be large enough so as to be clearly visible, legible, and comprehensible. In addition, all order forms filled out by patrons shall include an Order Warning of Copyright (Appendix A), and all locations where orders are accepted must display this warning.

The library reserves the right to refuse to copy fragile materials, either from its own collection or on loan from another library, or items difficult to replace if, in the opinion of the responsible librarian or staff member, the materials would be damaged.

The libraries will observe foreign copyrights. (See page 3.) It is the user's responsibility to determine the status of copyright. A suggested title to consult is: Copyright Laws and Treaties of the World (Unesco). In the Government Publications Department of the Bloomington Main Library it is Unesco Publication G-228.

Theses and Dissertations

The copyright Act defines publication as follows: "Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership..." Depositing copies of theses and dissertations in a library constitutes publication, and for a publication to be protected by copyright it must bear the notice of copyright. Therefore, the library may photocopy any thesis or dissertation that does not have the notice of copyright. If the dissertation or thesis is copyrighted and is available from University Microfilms, International, we may not microfilm it even with the author's permission because University Microfilms, International, is given the right to microfilm and to produce hard copy from the microfilm when the author of the dissertation or thesis signs the contract with UMI. With the author's permission, we could photocopy it.

Unpublished Works

Works that were created before the present law came into effect, but had neither been published nor registered for copyright before January 1, 1978, have been automatically brought under the statute and are now given Federal copyright protection. The duration of copyright in these works will generally be computed in the same way as works created on or after January 1, 1978: the life-plus-50 or 75/100-year terms will apply to them as well. Copyright in works created before January 1, 1978, last until December 31, 2002, and in some cases, much later. It is not necessary for unpublished works to bear the copyright notice. In spite of this careful protection, there are situations when such works may be copied: when libraries or archives need to duplicate them for the purposes of scholarly research or preservation.

MEDIA

The Libraries will follow the general policies below for all non-print items except where special circumstances are noted.

1. Complete copyrighted works or substantial portions thereof will not be duplicated.

2. If multiple copies of copyrighted materials are needed, they must be purchased. Duplication of materials is only allowed if unused materials are no longer available at a fair price.

3. Some version of the attached form letter should be sent to copyright holders of materials when the entire work or a substantial portion thereof needs to be converted from one format to another. If permission to convert is not granted, purchase of the material will be reconsidered. (See Appendix C)

4. Media materials placed on reserve are subject to the same limitations that apply to all reserve materials.

A large, heavily used collection of videotapes is maintained by the Libraries. The following special policies apply to all videocassettes held by the Libraries.

1. It is the policy of the library to make one archive tape for each tape purchased unless specifically forbidden by the supplier. The original tape is not for circulation or patron use. It is to be used only for replacement of a damaged tape.

    a. Agreements are negotiated with each major supplier to allow the making of an archive tape for each tape purchased.

    b. Purchase orders to new suppliers or to suppliers from whom fewer than 5 tapes per year are bought will contain notices of the library's intention to make an archive tape. (See Appendix D)

    c. The library will pay a suitable fee for this right.

2. If multiple copies of copyrighted materials are needed for viewing, they must be purchased.

3. Some version of the attached form letter should be sent to copyright holders of materials when the materials need to be converted from one form to another. If permission to convert is not granted, purchase of the material will be reconsidered. (See Appendix C)

Musical Works

The Indiana University Libraries will not reproduce copyrighted musical works except to replace damaged, lost, stolen or out-of-print works, if the library has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price. (Section 108)(c)

The following are also acceptable conditions for classroom copying based on fair use under section 107:

1. Multiple copies of an entire work may be duplicated for performance purposes, provided purchased replacement copies are substituted in due course.
2. Multiple copies of excerpts may be duplicated for classroom purposes if the excerpt in no case comprises an entire performable unit, and in no case exceeds 10 percent of the entire work.

Representatives of music publishers, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision have developed guidelines with respect to music and they are to be found in Appendix G.

Computer Software

The Computer Software Copyright Act of 1980 defines a computer program as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." The final report of the National Commission on New Technological Uses of Copyrighted Works recommended that protection of copyright in computer programs be the same as that for other works of authorship.

The new law gives the owner of a program the right to copy it or transfer rights in it, but it also states that it "is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program" under certain circumstances, providing "such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful." The law further states "Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner."

"Guidelines for Users of Academic Computing Resources at Indiana University" include this statement:

> Copying of copyrighted or private software without explicit permission of the owner is forbidden.

Unsupervised Photocopy Machines

All unsupervised photocopying machines available for the public use shall display a sign with the following text: "Notice: The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement." The sign shall be printed on heavy paper or other durable material in type at least 18 points in size and shall be displayed prominently so as to be clearly visible, legible and comprehensible to a user of the machine.

Prepared by
Betty Jarboe
Reference Department

Bibliography of Selected Titles on Copyright in the Indiana University Libraries

Chickering, Robert B. How to Register a Copyright and Protect Your Creative Work: A Basic Guide to the New Copyright Law and How It Affects Anyone Who Wants to Protect Creative Work. New York: Scribner, c1980. (KF 2995 .C45. Education Library, UGL)

Crawford, Tad. The Visual Artist's Guide to the New Copyright Law. New York: Graphic Artists Guild, c1978. (KF 3050 .C7. Fine Arts Library)

Crawford, Tad. The Writer's Legal Guide. New York: Hawthorn Books, c1977. (KF 3084 .C7. General Collections, Business Library, Law Library)

Fair Use and Free Inquiry: Copyright Law and the New Media. Eds. John Shelton Lawrence and Bernard Timberg. Norwood, N.J.: Ablex Publishing Corporation, c1980. (KF 3030.1 .A75 F34. Journalism Library, Law Library)

Johnston, Donald F. Copyright Handbook. New York: R.R. Bowker, 1982. (KF 2994 .J63 1982. General Collections, Education Library, Law Library, Reference Room)

Miller, Jerome K. Applying the New Copyright Law: A Guide for Educators and Librarians. Chicago: American Library Association, 1979. (KF 2995 .M54. Reference Room, SLIS Library)

Miller, Jerome K. U.S. Copyright Documents: An Annotated Collection for Use by Educators and Librarians. Littleton, Colo.: Libraries Unlimited, Inc., 1981. (KF 2989.56 .A16 M55. Reference Room)

Patton, Warren L. An Author's Guide to the Copyright Law. Lexington, Mass.: Lexington Books, c1980. (KF 2994 .P36. Journalism Library)

Seltzer, Leon E. Exemptions and Fair Use in Copyright: The Exclusive Rights Tensions in the 1976 Copyright Act. Cambridge, Mass.: Harvard University Press, 1978. (KF 3020 .S44. Journalism Library, UGL)

Shemel, Sidney. This Business of Music. 4th ed. New York: Billboard Publications, 1979. (ML 3790 .S5 1979. Business Library)

Sparkman, Joseph B. Copyright Primer for Film and Video. Portland, Oregon: Northwest Media Project, c1978. (KF 3070 .S63. Journalism Library)

Thorpe, James Ernest. The Use of Manuscripts in Literary Research: Problems of Access and Literary Property Rights. 2d ed. New York: Modern Language Association of American, 1979. (Z 692 .M28 T47 1979. General Collections, Reference Room)

United States. Copyright Office. Catalog of the Copyright Entries. Fourth Series. Part 1: Nondramatic Literary Works. Washington, D.C.: Copyright Office, Library of Congress, Jan./Mar. 1978- . (Z 642 .U68. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 2. Serials & Periodicals. Washington: Copyright Office, Library of Congress, 1978- . (Z 642 .A23. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 3. Performing Arts. Washington, D.C.: Copyright Office, Library of Congress, Jan./Mar. 1980- . (Z 653 .U59. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 4. Motion Pictures and Filmstrips. Washington: Copyright Office, Library of Congress, 1978- . (PN 1998 . U6153. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 5. Visual Arts. Washington, D.C.: Copyright Office, Library of Congress, 1978- . (Z642 .U685. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 6. Maps. Washington, D.C.: Copyright Office, Library of Congress, Jan./June 1978- . (Z 6028 .U477. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 7. Sound Recordings. Washington, D.C.: Copyright Office, Library of Congress, Jan./June 1978- . (Z 653 .U595. General Collections)

United States. Copyright Office. Catalog of Copyright Entries. Fourth Series. Part 8. Renewals. Washington, D.C.: Copyright Office, Library of Congress, Jan./June 1978- . (Z 642 .U69. General Collections)

Wincor, Richard. Copyright, Patents, and Trademarks: The Protection of Intellectual and Industrial Property. Dobbs Ferry, N.Y.: Oceana Publications, 1980. (KF 2980 .S55. Business Library)

APPENDIX A. Warning Concerning Copyright Restrictions

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

APPENDIX B. Reserves Form

The following statement may be used on reserve request forms:

The material I am requesting for reserve

☐ complies with the Copyright Law (PL 94-553)

or

☐ permission to copy has been granted by the copyright holder

____

(Signature of faculty member)

APPENDIX A. Warning Concerning Copyright Restrictions

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

APPENDIX B. Reserves Form

The following statement may be used on reserve request forms:

The material I am requesting for reserve

☐ complies with the Copyright Law (PL 94-553)

or

☐ permission to copy has been granted by the copyright holder

____
(Signature of faculty member)

INDIANA UNIVERSITY

THE UNIVERSITY LIBRARIES
Bloomington, Indiana 47405

APPENDIX C. Media Purchase Form

Indiana University Libraries would like to purchase the following materials from you. However, these materials are apparently only available in ______________________ (e.g., phonodisc) form and we need to have them in ______________________ (e.g., audiocassette) form. May we have permission to convert these materials to provide access to our patrons?

____
(Signature of librarian)

INDIANA UNIVERSITY

THE UNIVERSITY LIBRARIES
Bloomington, Indiana 47405

SAMPLE LETTER TO BE ENCLOSED WITH ORDERS FOR VIDEO MATERIALS FROM VENDORS WITH WHOM THE LIBRARIES DO NOT HAVE A NEGOTIATED ARCHIVE TAPE AGREEMENT

Dear

It is the policy of the Indiana University Libraries to make one (1) copy for use of each videotape purchased. The original videotape is retained as an archive tape. It is used to make another copy if the copy made at the time of purchase becomes so damaged as to be unusable. The original archive tape is used only for this purpose; it is not viewed by patrons of the Libraries.

The Libraries assume that provision of a videotape by a vendor indicates acceptance of this policy. If you have questions about the policy, please contact the Acquisitions Department, Indiana University Libraries.

Sincerely,

INDIANA UNIVERSITY

INDIANA UNIVERSITY LIBRARIES
Bloomington, Indiana 47405

APPENDIX E. Permission to copy form

Name of publisher
Street Address
City, State, Zip

Gentlemen:

A faculty member/student on our campus, name of patron, needs to read the following number articles from your name of publication:

List citations to articles

Patron will use the articles only for his/her own research and will not reproduce or distrubute them. May we have your permission to obtain a single photocopy of each article for patron?

Thank you for your assistance.

Sincerely,

The above letter can be adapted to obtain permission to copy other forms of material. The following information should be given:

1. Title, author and/or editor, and edition of materials to be copied.
2. Number of copies to be made.
3. Use to be made of duplicated materials.
4. Type of reprint (photocopy, microfilm).

APPENDIX F. Library Photoreproduction Order Forms

NOTICE

Warning Concerning Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgement, fulfillment of the order would involve violation of copyright law.

OFFICE USE ONLY

Library Photoreproduction
Cash Order

PLEASE GIVE COMPLETE INFORMATION: Date ____________

Name ______________________________ Phone no. __________

Campus Address ______________________________

Author ______________________________

Title of Article ______________________________

Title of Book or Periodical ______________________________

Date of Periodical __________ Volume __________ Issue No. __________

☐ 1 page per exposure ☐ 2 pages per exposure (side by side)
☐ duplex (front and back)

Page ________ to ________ Inc.
Page ________ to ________ Inc.
Page ________ to ________ Inc.

SPECIAL INSTRUCTIONS

Please return volume to:
☐ Stacks (Main Library)
☐ Patron
☐ Other (Please specify) __________

The material I am requesting to
photocopied
☐ Complies with the Copyright Law of U.S. or Country of Origin
☐ Permission to copy has been granted by the copyright holder
Signature ____________
Date ____________

NOTICE

Warning Concerning Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgement, fulfillment of the order would involve violation of copyright law.

OFFICE USE ONLY

Library Photoreproduction
Library Order

PLEASE GIVE COMPLETE INFORMATION: Date ____________

Name ______________________________ Phone no. __________

Department ______________________________

Author ______________________________

Title of Article ______________________________

Title of Book or Periodical ______________________________

Date of Periodical __________ Volume __________ Issue No. __________

☐ 1 page per exposure ☐ 2 pages per exposure (side by side)
☐ duplex (front and back)

Page ________ to ________ Inc.
Page ________ to ________ Inc.
Page ________ to ________ Inc.

SPECIAL INSTRUCTIONS

Please return volume to:
☐ Stacks (Main Library)
☐ Patron
☐ Other (Please specify) __________

The material I am requesting to
photocopied
☐ Complies with the Copyright L
of U.S. or Country of Origin
☐ Permission to copy has been
granted by the copyright hold
Signature ____________
Date ____________

APPENDIX G. Guidelines -- Classroom Copying

1. Agreement on guidelines for classroom copying in not-for-profit educational institutions with respect to books and periodicals

The purpose of the following guidelines is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. Single Copying for Teachers

A single copy may be made for any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;
B. An article from a periodical or newspaper;
C. A short story, short essay or short poem, whether or not from a collective work;
D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and,
B. Meets the cumulative effect test as defined below; and
C. Each copy includes a notice of copyright.

DEFINITIONS

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for a maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers' reprints or periodicals;
(b) be directed by higher authority;
(c) be repeated with respect to the same item by the same teacher from term to term.

(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976

Ad Hoc Committee on Copyright Law Revision

Author-Publisher Group

Authors League of America

Association of American Publishers, Inc.

APPENDIX G. Guidelines -- Interlibrary Loan

2. The National Commission of the New Technological Uses of Copyrighted Works (CONTU) guidelines for proviso of subsection 108(G)(2)

1. As used in the proviso of subsection 108(G)(2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work: shall mean:

   (a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request was made. These guidelines do not define the meaning, with respect to such a request, of "... such aggregate quantities as to substitute for a subscription to [such periodical]."

   (b) with respect to any other material described in subsection 108(d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity--

   (a) shall have in force, or shall have entered an order for a subscription to a periodical, or
   (b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work,

   material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

3. American Library Association record maintenance and retention guidelines for interlibrary loan departments

This statement deals only with recommended RECORD MAINTENANCE AND RETENTION GUIDELINES. Interlibrary Loan librarians have a responsibility to familiarize themselves thoroughly with the provisions of the Copyright Revision Act of 1976 (P.L. 94-553), particularly Sections 107 and 108, and the provisions of the Guidelines drafted by the National Commission on New Technological Uses of Copyrighted Works (CONTU). Guideline #4 states:

> The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

Most libraries already keep some kind of record of all interlibrary loan requests. That record should continue. However, it must be supplemented by the kind of record described below for certain kinds of requests. (See Subsection 108(d) of the law and CONTU Guidelines #1.)

1. Form of Record.

It is recommended that records for periodicals be kept by title. Two possibilities seem workable: 1) a copy of the ALA Request for Loan or Photocopy form, a copy of the teletype request, etc. could be kept; or 2) a card could be set up for each title requested containing essential information including whatever is necessary to link this card to the library's file of request forms.

N.B.: A library may choose one of these methods or develop its own. Whatever is done it is essential that the library keep a file of requests for these materials, that the file be accessible by title and that the date of the request be noted.

2. Creation of Record.

a. For periodical material: Beginning January 1, 1978, when a request is made for a copy of an article or articles published in a copyrighted periodical within five years prior to the date of the request, the library will either: a) set up a card for the title of that periodical or b) enter a copy of the request form in a file of forms arranged by title. If a card is set up it should include the date of the request and either the name of the requester or the requester's order number so that reference may be made to the complete form if necessary. All later requests for the same periodical title will be recorded in like manner.

b. For material in any other copyrighted work: Beginning on January 1, 1978, when a request is made for a contribution to a collection or for a small part of any copyrighted work, the library will follow procedures based on those described above. The record may be kept by title or main entry.

3. Use of Record.

   a. Making requests: Before requesting a photocopy, the record will be checked. If a library is using the card system and no card exists, one will be created. If a card does exist, and the number of previous requests filled complies with the CONTU Guidelines, the date and name of requester will be entered. If a library is using the copy system and the number of previous requests complies with the CONTU Guidelines, the request will be made and a copy filed.

   b. Receiving material: When a request is filled, this will be noted on the card or copy. If a request is not filled, a line will be drawn through the entry on the card or the copy will be marked "not filled."

4. Contingencies.

   When a request is made for loan of material rather than a copy, but the supplying library sends a photocopy, a record will be made either by marking on a card or by filing a copy of the form, at the time when the material is received.

5. Retention of Records.

   a. Items in this file of cards or copies of forms must be kept until the end of the third complete calendar year after the end of the calendar year in which a request shall have been made. Thus, for a request made on any date in 1978, the record must be retained until 31 December 1981.

   b. If a library uses the card method, copies of the form on which an interlibrary loan has been requested must also be kept, in whatever order the library wishes, until the end of the third complete calendar year after the end of the calendar year in which a request is made.

   c. Information contained in the records should be summarized before records are destroyed. The summary may be useful for the five-year review mandated by Subsection 108(i) of the copyright law as well as for internal management purposes. Suggestions for the form of the five-year review summary will be made at a later time.

American Library Association
Reference and Adult Services Division
Interlibrary Loan Committee
September, 1977

APPENDIX G. Guidelines -- Music

4. Guidelines for educational uses of music

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a selection, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
   (b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is (1) confirmed by the copyright proprietor to be out of print, or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational instituition or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations, or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

5. American Library Association Guidelines for seeking or making a copy of an entire copyrighted work for a library, archives, or user

A library or archives which wishes to make a single photocopy or sound recording copy of a published copyrighted work for a user or to replace a copy or phonorecord in its collection which is damaged, deteriorating, lost, or stolen, must first make a reasonable effort to obtain a copy in its original form at a fair price, in accordance with Subsections 108(c) and 108(e) of Public Law 94-553, the 1976 omnibus copyright revision act.

"Reasonable Effort"

A reasonable effort requires that the library or archives take the following steps:

1. Attempt to determine whether the work is in print by consulting commonly-known trade bibliographic sources, e.g., Publishers' Trade List Annual, Books in Print for printed books, Schwann Catalog, Phonolog for phonorecords.

2. If the work is in print, attempt to acquire it from a library wholesaler or retail outlet, or from the publisher of the work.

3. If the work is out of print and unavailable in its original form from these sources, attempt to acquire the work or a photocopy or sound recording copy from the publisher or other copyright owner (if such owner can be located readily at the address listed in the copyright registration) or from an authorized reproducing service.

4. If the publisher, other copyright owner, or authorized reproducing service is unable or unwilling to supply a copy of the work, or if the requesting library receives no reply to its request within thirty days of the date it is sent, then it may place an order for a photocopy or sound recording copy with a library or archives which has a copy. The "Revised Interlibrary Loan Form," which has been prepared by the ALA-RASD Interlibrary Loan Committee, may be used for this purpose, in which case the appropriate box on the form should be checked, to indicate that all of the above-mentioned steps have been taken. An order form used in its stead should also indicate compliance with these guidelines.

"Fair Price"

1. Original Format
   In order to meet the requirement of fair price, an unused copy of a published copyrighted work should be available at a price as close as possible to the latest suggested retail price.

2. Reproductions (photocopy, microform, sound recording copy)
   To meet the requirement of fair price, a reproduction of a copyrighted work should be available on a timely basis (within thirty days) at a price which is as close as possible to actual manufacturing costs plus royalty payments.

   The requesting library or archives shall maintain records on all requests it has made for photocopies or sound recording copies to which these guidelines apply, together with records of the fulfillment of these requests, which records shall be retained until the end of the third complete year after the end of the calendar year in which the respective request shall have been made.

Authorized Reproducing Services

The House Judiciary Committee Report on the New Copyright Law (H. Rept. 94-1476) in discussing Subsections 108(c) and 108(e) of the copyright law, specifies that a reasonable investigation to determine that an unused replacement or copy cannot be obtained at a fair price will, in the normal situation, involve recourse to the publisher or other copyright owner, or an authorized reproducing service.

THE RTSD Resources and Technical Services Division of the American Library Association Copyright Revision Act Committee has prepared a set of criteria which authorized reproducing services should meet in providing adequate services to the library community.

Publishers, other copyright owners, and authorized reproducing services which receive requests for photocopies or sound recording copies should all be required to meet the following conditions:

1. The copy supplied should be of sufficiently good quality to meet the needs of the user, or of as good quality as that which the requesting library or archives could ordinarily expect to receive from a supplier.

2. The copy should be supplied, or notification given to the requester that such copy cannot be supplied, within thirty days of the date of receipt of the request.

3. The price of the copy should be as close as possible to actual manufacturing costs plus royalty payments.

If any of these conditions are not met, the requester may be considered to have complied with the provisions of Subsection 108(c) and 108(e) of PL 94-553 and may order a photocopy or sound recording of a work from a library or archives which possesses one without further authorization.

While authorized reproducing services should be required to meet the same criteria of quality, service and price as publishers and other copyright owners, there is a great need for better bibliographic information about what titles are available from such reproducing services. This could be done in the following way:

1. Publishers should include in their catalogs in PTLA a list of titles which are available from reproducing services and their prices, together with the names and addresses of these services.

2. Books in Print should include these titles in their regular listing, together with the names of the reproducing services, or they could have a separate listing of these titles.

Prepared by Implementation of the Copyright Revision Act Committee
Resources and Technical Services Division
American Library Association

UNIVERSITY OF MASSACHUSETTS AT AMHERST

September 1986

Guidelines for Use of Copyrighted Materials

Table of Contents

Page

I. Statement of Policy.. 1

II. Guidelines for Photocopying of Copyrighted Material ("Fair Use").. 2

III. American Library Association Model Policy.................. 3

IV. Software Copyright.. 9

V. Media Reproduction.. 10

VI. American Association Publishers Report..................... 11

VII. How to Obtain Permission.................................. 14

Questions regarding copyright law should be referred to University Counsel, Room 374, Whitmore Administration Building, 545-2204.

Questions regarding the Campus Guidelines and associated issues described in this report should be referred to Administrative Services, Room 336, Whitmore Administration Building, 545-0776.

University of Massachusetts at Amherst

I. Statement of Policy for Use of Copyrighted Materials

It is the policy of the Amherst campus that all faculty, staff, employees, and students respect the rights conferred by the copyright laws and through licensing arrangements. Duplicating protected material such as printed material, software, and other media without obtaining permission from copyright owners when necessary, is prohibited.

The purpose of these guidelines is to facilitate compliance with the U.S. Copyright Law and to inform the campus as to the fair use provisions of this law as it applies to classroom, teaching, research, and library use.

Legislation governing this issue predominately addresses photocopying of printed material. However, growing concerns with regard to the legalities of reproduction of software and other instructional media, necessitate their inclusion in campus guidelines. Congressional Committees are currently revising copyright legislation to include more specific reference to computer programs and other instructional media such as audio and video works. Campus guidelines will be amended to include new legislation as it is promulgated.

This report is designed to establish and disseminate campus guidelines concerning reproduction of copyrighted materials and as a guide to assist the campus community in determining when copyright permission is required. Guidance in obtaining permission for reproduction of copyrighted works is appended to this report. The intent of the University is to protect its employees who act in good faith in the course of their duties against claims for copyright violation, individuals who knowingly act in violation of the rights of others, including rights protected by copyright laws are not so protected.

Specific questions or clarification regarding copyright law should be referred to University counsel, 374 Whitmore Building, telephone 545-2204.

II. Guidelines for Photocopying of Copyrighted Materials

U.S. Constitution Article 1, Section 8. The copyright statute, 17 U.S.C. 106 protects the copyright owners exclusive right to copy and distribute his/her work. An exception to this principle is the doctrine of "fair use" which allows certain photocopying of copyrighted works for educational or scholarly purposes. In determining whether the use is a "fair use" the Law requires that the following factors be considered(1):

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non profit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

Permission must be obtained from copyright owners unless the intended use of the materials is already permissible under the fair use exception.

Guidelines for classroom and scholarly use of copyrighted material have been developed by (1) The American Library Association (ALA) and (2) through an agreement between the Association of American Publishers (AAP) and the American Council of Education.

The ALA guidelines provide the most practical interpretation of the fair use exception, and Amherst campus faculty and staff are considered to be in compliance with copyright law if they proceed according to these ALA guidelines. The AAP guidelines go beyond the points outlined by ALA in that quantitative measures are included as indicators of compliance.

Verbatim reports of both ALA and AAP documents are attached. Campus policy, at minimum subscribes to the guidelines as prepared by the ALA. Those in search of more precise quantitative measures of fair use will benefit from the AAP guidelines.

---

(1) 17 U.S.C. Section 107.

III. American Library Association Model Policy(2)

I. Unrestricted Photocopying

A. Uncopyrighted Published Works

Writings published before January 1, 1978, which have never been copyrighted may be photocopied without restriction. Copies of works protected by copyright must bear a copyright notice, which consists of the letter "c" in a circle, or the word "Copyright", or the abbreviation "Copr.", plus the year of first publication, plus the name of the copyright owner, 17 U.S.C. 401. As to works published before January 1, 1978 in the case of a book, the notice must be placed on the title page or the reverse side of the title page. In the case of a periodical the notice must be placed either on the title page, the first page of text, or in the masthead. A pre-1978 failure to comply with the notice requirements resulted in the work being projected into the public domain, i.e., unprotected Copyright notice requirements have been relaxed since 1978, so that the absence of notice on copies of a work published after January 1, 1978, does not necessarily mean the work is in the public domain, 17 U.S.C. 405 (a) and (c). However, you will not be liable for damages for copyright infringement of works published after that date, if, after normal inspection, you photocopy a work on which you cannot find a copyright symbol and you have not received actual notice of the fact the work is copyrighted, 17 U.S.C. 405 (b). However, a copyright owner who found out about your photocopying would have the right to prevent further distribution of the copies if in fact the work were copyrighted and the copies are infringing, 17 U.S.C. 405 (b).

B. Published Works With Expired Copyrights

Writings with expired copyrights may be photocopied without restriction. All copyrights prior to 1906 have expired, 17 U.S.C. 304 (b). Copyrights granted after 1906 may have been renewed; however the writing will probably not contain notice of the renewal. Therefore, it should be assumed all writings dated 1906 or later are covered by a valid copyright, unless information to the contrary is obtained from the owner or the U.S. Copyright Office (see Copyright Office Circular 15t).

Copyright Office Circular R22 explains how to investigate the copyright status of a work. One way is to use the Catalog of Copyright Entries published by the Copyright Office and available in (the University Library) many libraries. Alternatively you may request the Copyright Office to conduct a search of its registration and/or assignment records. The Office charges an hourly fee for this service. You will need to submit as much information as you have concerning the work in which you are interested, such as the title, author, approximate date of publication, the type of work or any available copyright data. The Copyright Office does caution that its searches are not conclusive; for instance, if a work obtained copyright less than 28 years ago, it may be fully protected although there has been no registration or deposit.

---

(2) This is a verbatim March 1982 report of the Model Policy concerning college and university photocopying for classroom, research, and library reserve use.

C. Unpublished Works

Unpublished works, such as theses and dissertations, may be protected by copyright. If such a work was created before January 1, 1978 and has not been copyrighted or published without copyright notice, the work is protected under the new Act for the life of the author plus fifty years, 17 U.S.C. 303, but in no case earlier than December 31, 2002. If such a work is published on or before that date, the copyright will not expire before December 31, 2027. Works created after January 1, 1978, and not published enjoy copyright protection for the life of the author plus fifty years, 17 U.S.C. 302.

D. U.S. Government Publications

All U.S. Government publications with the possible exception of some National Technical Information Service Publishers less than 5 years old may be photocopied without restrictions except to the extend they contain copyrighted materials from other sources, 17 U.S.C. 105. U.S. Government publications are documents prepared by an official or employee of the government in an official capacity, 17 U.S.C. 101. Government publications include the opinions of courts in legal cases, Congressional Reports on proposed bills, testimony offered at Congressional hearings and the works of government employees in their official capacities. Works prepared by outside authors on contract to the government may or may not be protected by copyright, depending on the specifics of the contract. In the absence of copyright notice on such works it would be reasonable to assume they are government works in the public domain. It should be noted that state government works may be protected by copyright. See, 17 U.S.C. 105. However, the opinions of state courts are not protected.

II. Permissible Photocopying of Copyrighted Works

The Copyright Act allows anyone to photocopy copyrighted works without securing permission from the copyright owner when the photocopying amounts to a "fair use" of the material, 17 U.S.C. 107. The guidelines in this report discuss the boundaries for fair use of photocopied material used in research or the classroom or in a library reserve operation Fair use cannot always be expressed in numbers - either the number of pages copied or the number of copies distributed. Therefore, you should weigh the various factors listed in the act and judge whether the intended use of photocopied copyrighted material is within the spirit of the fair use doctrine. Any serious questions concerning whether particular photocopying constitutes fair use should be directed to University (College) counsel.

A. Research Uses

At the very least, instructors may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

1. a chapter from a book;
2. an article from a periodical or newspaper;
3. a short story, short essay, or short poem, whether or not from a collective work;
4. a chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.

These examples reflect the most conservative guidelines for fair use. They do not represent inviolate ceilings for the amount of copyrighted material which can be photocopied within the boundaries of fair use. When exceeding these minimum levels, however, you again should consider the four factors listed in Section 107 of the Copyright Act to make sure that any additional photocopying is justified. The following demonstrate situations where increased levels of photocopying would continue to remain within the ambit of fair use:

1. the inability to obtain another copy of the work because it is not available from another library or source or cannot be obtained within you time constraints; the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission;

2. the intention to photocopy the materials only once and not to distribute the material to others;

3. the ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work, the greater amount of material which may be photocopied).

Most single-copy photocopying for your personal use in research - even when it involves a substantial portion of a work - may well constitute fair use.

B. Classroom Uses

Primary and secondary school educators have, with publishers, developed the following guidelines which allow a teacher to distribute photocopied material to students in a class without the publisher's prior permission, under the following conditions:

1. the distribution of the same photocopied material does not occur every semester;

2. only one copy is distributed for each student which copy must become the student's property;

3. the material includes a copyright notice on the first page of the portion of material photocopied;

4. the students are not assessed any fee beyond the actual cost of the photocopying.

In addition, the educators agreed that the amount of material distributed should not exceed certain brevity standards. Under those guidelines, a prose work may be reproduced in its entirety if it is less than 2500 words in length. If the work exceeds such length, the excerpt reproduced may not exceed 1000 words or 10% of the work, whichever is less. In the case of poetry, 250 words is the maximum permitted.

These minimum standards normally would not be realistic in the university setting. Faculty members needing to exceed these limits for college education should not feel hampered by these guidelines, although they should attempt a "selective and sparing" use of photocopied, copyrighted material.

The photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work, 17 U.S.C. 107 (4). To guard against this effect, you usually should restrict use of an item of photocopied material to one course and you should not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner.

C. Library Reserve Uses

At the request of a faculty member, a library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face to face teaching discussed above. This University (College) believes that these guidelines apply to the library reserve shelf to the extent it functions as an extension of classroom readings or reflects an individual student's right to photocopy for his personal scholastic use under the doctrine of fair use. In general, librarians may photocopy materials for reserve room use for the convenience of students both in preparing class assignments and in pursuing informal educational activities which higher education require, such as advanced independent study and research.

If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article, or an entire chapter from a book, or an entire poem. Requests for multiple copies on reserve should meet the following guidelines:

1. the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level, 17 U.S.C. 107 (1) and (3);

2. the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material, 17 U.S.C. 107 (1) and (3);

3. the material should contain a notice of copyright, see, 17 U.S.C. 401;

4. the effect of photocopying the material should not be detrimental to the market for the work. (In general, the library should own at least one copy of the work.) 17 U.S.C. 107 (4).

For example, a professor may place on reserve as a supplement to the course textbook a reasonable number of copies of articles from academic journals or chapters from trade books. A reasonable number of copies will in most instances be less than six, but factors such as the length or difficulty of the assignment, the number of enrolled students, and the length of time allowed for completion of the assignment may permit more in unusual circumstances.

In addition, a faculty member may also request that multiple copies of photocopied, copyrighted material be placed on the reserve shelf if there is insufficient time to obtain permission from the copyright owner. For example, a professor may place on reserve several photocopies of an entire article from a recent issue of Time magazine or the New York Times in lieu of distributing a copy to each member of the class. If you are in doubt as to whether a particular instance of photocopying is fair use in the reserve reading room, you should seek the publisher's permission. Most publishers will be cooperative and will waive any fee for such a use.

D. Uses of Photocopied Material Requiring Permission

1. Repetitive copying: The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright, 17 U.S.C. 107 (3).

2. Copying for profit: Faculty should not charge students more than the actual cost of photocopying the material, 17 U.S.C. 107 (1).

3. Consumable works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner, 17 U.S.C. 107 (4).

4. Creation of anthologies as basic text material for a course: Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyright owners. Such photocopying is more likely to be considered as a substitute for purchase of a book and thus less likely to be deemed fair use, 17 U.S.C. 107 (4).

E. Infringement

Courts and legal scholars alike have commented that the fair use provisions in the Copyright Act are among the most vague and difficult that can be found anywhere in the Law. In amending the Copyright Act in 1976 Congress anticipated the problem this would pose for users of copyrighted materials who wished to stay under the umbrella of protection offered by fair use. For this reason, the Copyright Act contains specific provisions which grant additional rights to libraries and insulate the employees of a non-profit eductional institution, library or archives from statutory damages for infringement where the infringer believed or had reasonable grounds to believe the photocopying was a fair use of the material, 17 U.S.C. 504 (c) (2).

Normally, an infringer is liable to the copyright owner for the actual losses sustained because of the photocopying and any additional profits of the infringer, 17 U.S.C. 504 (a) (1) and (b). Where the monetary losses are nominal, the copyright owner usually will claim statutory damages instead of the actual losses, 17 U.S.C. 504 (a) (2) and (c). The statutory damages may reach as high as $10,000 (or up to $50,000 if the infringement is willful). In addition to suing for money damages, a copyright owner can usually prevent future infringement through a court injunction, 17 U.S.C. 502.

The Copyright Act specifically exempts from statutory damages any employee of a non-profit educational institution, library or archieves, who "believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107," 17 U.S.C. 504 (c) (2). While the fair use provisions are admittedly ambiguous, any employee who attempts to stay within the guidelines contained in this report should have an adequate good faith defense in the case of an innocently committed infringement.

If the criteria contained in this report are followed, it is our view that no copyright infringement will occur and that there will be no adverse affect on the market for copyrighted works.

IV. Software Copyright

Reproducing computer software without authorization violates the U.S. Copyright Law. Purchase of a software product represents a license fee for the use of one copy, however, the 1980 Copyright Amendment Section 117 provides that:

It is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or;

(2) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Software Security

When not being used software diskettes and associated documentation must be kept in a secure location (i.e., locked desk, storage cabinet, file, etc.) to minimize potential risks of unauthorized use, duplication, damage, theft, alteration, etc.

Permanent back-up copies of all software diskettes should be maintained in a location physically removed from the principal location. These backup copies should definitely be made as permitted by the copyrighted law, since replacement by the vendor is very unlikely and software would have to be repurchased. If software is copy-protected, the buyer should negotiate with the vendor to supply a backup copy as allowed by the copyright law. If the vendor will not provide a backup copy at a reasonable price and one cannot be made, this should be taken into consideration before a final purchase decision is made.

Software Licenses

In purchasing software, University Procurement officers will assist in negotiating special rate licenses from vendors whenever possible and efforts will be made to arrange favorable agreements with regard to licensing and copy policy. It is the responsibility of all software users to be aware of and in compliance with the licenses and limitations placed on the use of software especially as it pertains to unauthorized reproduction.

V. Media Reproduction

Video/Audio Recordings

Reproduction of media works must also fall within the guidelines for permissible use of copyrighted materials. The University Audio Visual Services Department is in compliance with Copyright Law and Guidelines established in 1981 by a negotiating committee of legislators and educators will respond to requests for copying media as follows:

Video Copies of Films

Written permission from copyright holder must be obtained in order to duplicate video recording of a copyrighted film.

Instructional Media

Audio Visual Services will provide instructional aids such a slides, transparencies, audio and video recordings and other media formats. However, only portions of copyrighted works may be copied without permission for instructional purposes eg. charts, diagrams, graphs, pictures from a book, drawings, excerpts from a score film video or radio broadcast or sound recording. The amount and substantiality of the portion used in relation to the copyrighted work as a whole must be considered in determining whether the use of the excerpt is "fair use".

Guidelines for Off-Air Recordings of Broadcast Programming for Educational Purposes

The full text of Guidelines can be obtained from the University Audio Visual Department, Goodell Building. These guidelines allow non-profit educational institutions to make off-air video recordings without permission, providing the video recording is erased after 45 days.

Music Library

Internal copyright regulations can be obtained from the Music Library.

VI. AGREEMENT ON
GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS WITH RESPECT TO BOOKS AND PERIODICALS *

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. SINGLE COPYING FOR TEACHERS

A single copy may be made of any of the following by or for a teacher at his/her individual request for his/her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;
B. An article from a periodical or newspaper;
C. A short story, short essay or short poem, whether or not from a collective work;
D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. MULTIPLE COPIES FOR CLASSROOM USE

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use of discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below:
and;
B. Meets the cumulative effect test as defined below:
and;
C. Each copy includes a notice of copyright.

---

* This is a verbatim report of the Agreement dated March 19, 1976 signed by the Ad Hoc Committee on Copyright Law Revision, the Author Publisher Group, the Authors League of America, and the Association of American Publishers.

DEFINITIONS

Brevity

i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words;

ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words;

(Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.);

iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue;

iv. "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

i. The copying is at the instance and inspiration of the individual teacher, and;

ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission;

Cumulative Effect

i. The copying of the material is for only one course in the school in which the copies are made;

ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term;

iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

64

III. PROHIBITIONS AS TO I AND II ABOVE

Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

VII. How to Obtain Permission

When a use of photocopied material requires that you request permission, you should communicate complete and accurate information to the copyright owner. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:

1. title, author and/or editor, and edition of materials to be duplicated;
2. exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material;
3. number of copies to be made;
4. use to be made of duplicated materials;
5. form of distribution (classroom, newsletter, etc.);
6. whether or not the material is to be sold;
7. type of reprint (ditto, photography, offset, typeset).

The request should be sent, together with a self-addressed return envelope, to the Permissions Department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled The Literary Marketplace, published by the R.R. Bowker Company and available in all libraries.

The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission. It is not inappropriate to pass this fee on to the students who receive copies of the photocopied material.

The Copyright Clearance Center also has the right to grant permission and collect fees for photocopying rights for certain publications. Libraries may copy from any journal which is registered with the CCC and report the copying beyond fair use to CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from the CCC, 310 Madison Avenue, New York, NY 10017.

Sample Letter to Copyright Owner (Publisher) Requesting Permission to Copy

March 1, 1982

Material Permissions Department
Hypothetical Book Company
500 East Avenue
Chicago, Illinois 60601

Dear Sir or Madam:

I would like permission to copy the following for continued use in my classes in future semesters:

Title: Learning is Good, Second Edition
Copyright: Hypothetical Book Co., 1965, 1971
Author: Frank Jone
Material to be duplicated: Chapters 10, 11 and 14 (photocopy enclosed)
Number of copies: 500
Distribution: The material will be distributed to students in my classes and they will pay only the cost of the photocopying.
Type of reprint: Photocopy
Use: The chapter will be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,

Faculty Member

BRIGHAM YOUNG UNIVERSITY

1987

DRAFT

DRAFT POLICY STATEMENT

PHOTOCOPYING FOR TEACHING AND RESEARCH

A complex new U.S. copyright law went into effect on January 1, 1978. Under the copyright law, the copyright owner has the exclusive right to reproduce and distribute his work, except in certain specified situations where copying is unrestricted. And even where restricted, the so-called "fair use" exception still permits copying without the copyright owner's permission for purposes such as criticism, comment, teaching, scholarship or research.

A. Copying that is Completely Unrestricted

1. **Published Works Never Copyrighted.** Anyone may reproduce works that were never copyrighted. To determine whether an item has been copyrighted, look at the front pages of the book or periodical for a copyright notice. It consists of the copyright symbol (©), the word "Copyright," or the abbreviation "Copr.", plus the year of first publication and the copyright owner's name. If the text has no copyright notice, a copier who before copying did not know by some other means that the work was actually copyrighted is not liable.

2. **Expired Copyrights.** Anyone may reproduce a published work for which the copyright has expired. All copyrights dated earlier than 1908 have expired. Copyrights dated 1908 or later may have expired because the initial period of copyright protection is for 28 years. Copiers should either assume the protection is still in effect for copyrights dated 1908 or later, or they should ask the copyright owner or the U.S. Copyright Office whether the work is still protected by copyright.

3. **U.S. Government Publications.** U.S. Government publications prepared by an officer or employee of the U.S. Government as part of the author's official duties may be copied freely because they cannot be copyrighted.

B. Copying That Is Restricted But Permitted Within Limits ("Fair Use")

Teachers may reproduce copyrighted works without securing permission and without paying royalties when the circumstances surrounding the copying amount to what the law calls "fair use." The following fair use guidelines are derived in large part from the model guidelines prepared by the American Library Association:

1. **Single Copies.** For teaching (including preparation) and for scholarly research, a teacher may make or have made a single copy of: (a) a chapter from a book; (b) an article from a journal, periodical or newspaper; (c) a short story, essay or poem; and/or (d) a diagram or picture in any of those works.

2. **Multiple Copies.** For one-time distribution in class to students, a teacher may make or have made multiple copies if he or she: (a) makes no more than one copy for each student; (b) includes the notice of copyright (writes it on the first sheet or copies the page on which it appears); (c) is selective and sparing in choosing poetry, prose and illustrations (i.e., not all or a substantial part of a work); and (d) makes no charge to the student beyond the actual cost of the photocopying. The right to make multiple copies is strengthened if the copying will not significantly affect the potential market for the work or if there is insufficient time (not to be abused) to seek permission from the owner of the copyright.

C. Copying for Which Teachers Should Obtain Permission

1. **Repetitive Copying.** The "fair use" justification is weakened in the case of photocopying repeatedly for use in successive terms or classes.

2. **Copying for Profit.** Fair use extends only to nonprofit copying. Teachers should not charge students more than the actual cost of photocopying and

should not make copies for students who are not in their own classes without obtaining permission. Fair use does extend to classroom copies made and distributed by a commercial copy center.

3. **Unpublished Works.** One should obtain permission to copy from owners of unpublished works because the law gives automatic copyright protection to unpublished works from the time they are created.

4. **Consumable Works.** Teachers need to secure permission before making multiple copies of copyrighted works that are intended to be consumed in classroom activities (e.g., workbooks, exercises, and standardized tests and their answers).

5. **Copying According to an Overall Plan.** Teachers may make fair use of copyrighted works if they photocopy on their own initiative, but in most instances it is not fair use to copy according to a plan designed by supervisors, which in the university context usually means administrators (e.g., a course syllabus prepared for all section instructors of a particular course).

D. How to Obtain Permission

The following information is generally required by a publisher before authorizing duplication of copyrighted materials: (1) title, author and/or editor, and the edition of materials to be duplicated; (2) exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material; (3) number of copies to be made; (4) how duplicated materials will be used (and how long); (5) form of distribution (classroom, newsletter, etc.); (6) whether or not the material is to be sold for profit; and (7) type of reprint (ditto, photography, offset, typeset). The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher. If the publisher's address does not appear at the front of the material, it may be obtained in The Literary Marketplace, published by the R. R. Bowker Company and available in all libraries. Because each request must be checked closely by the publisher, it is advisable to allow enough lead time (e.g., at least 60 days) to obtain permission before the materials are needed. It is also helpful to (1) request all permissions for a specific project at the same time; (2) resist the temptation to request blanket permission (i.e., an unlimited or unconditional privilege)--it cannot, in most cases, be granted; and (3) send a photocopy of the copyright page and the page or pages for which permission is requested. A form letter requesting permission to copy is available in each Dean's office.

E. Penalties for Infringement of Copyright

A copyright owner can seek to halt infringement by suing for an injunction and can seek to recoup market losses by claiming money damages as well. Even if a teacher's copying is held to infringe, however, the new act limits any award to "actual damages" if the teacher believes the copying was fair use and he or she had reasonable grounds for that belief. Adhering to these guidelines should afford reasonable grounds for a finding of fair use. Actual monetary loss should be of little consequence if the teacher attempts to limit copying to fair use. Good faith exercise of that right precludes copying in quantities that are likely to seriously affect the potential market for the work.

F. Assistance Available from Legal Staff

If you have further questions, please call the Office of General Counsel.

UNIVERSITY OF UTAH

POLICY AND PROCEDURES MANUAL

No. 6-5	Rev. 2
Date September 27, 1985	
Page 1 of 13	

Subject COPYRIGHT POLICY: COPYING OF COPYRIGHTED WORKS

I. PURPOSE

To declare the university's policy regarding compliance with the Copyright Revision Act of 1976.

II. REFERENCES

Policy and Procedure No. 6-4, Patents, Inventions and Copyrights.

Policy and Procedure No. 4-12, Campus Printing Policy.

III. DEFINITIONS

Terms used in this Policy and Procedure have the same meaning as in Title 17, United States Code (see 17 U.S.C., Section 101), including:

A. Audiovisual works are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

B. Copies are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

C. Copyright owner, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

D. Fair use is a reasonable noninfringing use, including reproduction, of copyrighted material for such purposes as criticism, comment, news reporting, teaching, scholarship or research, as determined from consideration of all relevant circumstances, including (1) the purpose or character of the use, e.g., for commercial purposes or for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

E. Literary works are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, discs, or cards, in which they are embodied.

F. Phonorecords are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

G. Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

H. University, unless the context otherwise requires, includes the institution and its officers and employees acting in the scope of their office or employment.

I. Work means a work of authorship that is capable of copyright protection, including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, motion picture, audiovisual, and sound recording works.

IV. POLICY

A. Notices and Warnings

1. A "Display Warning of Copyright" conforming to requirements specified by the Register of Copyrights shall be displayed prominently, in such a manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of each place on the university campus at which orders are accepted for the making of copies or phonorecords of copyrighted materials.

2. An "Order Warning of Copyright" conforming to requirements specified by the Register of Copyrights shall be included on printed forms used by library patrons for ordering copies or phonorecords of copyrighted materials.

3. All unsupervised reproducing equipment located on university premises shall display a notice that the making of a copy of copyrighted materials may be subject to the copyright law. The notice is to be affixed on the equipment so that it is readily apparent to a person making a copy.

B. Copying for Personal Use

The making of a single reproduction or phonorecording of copyrighted matter, including works contained in the collections of the university libraries or archives or obtained by interlibrary loan, is permitted if:

1. The university reasonably believes that the reproduction is made without any purpose of direct or indirect commercial advantage;

2. the copy or phonorecord will become the property of the user;

3. the university has no notice that the copy or phonorecord will be used for any purpose other than private study, scholarship, or research; and

4. such reproduction or phonorecording, and the intended use to be made of it, constitute fair use. Copyrighted material to be reproduced under this paragraph shall be deemed reasonable as to amount and substantiality if it does not exceed the following guidelines:

   (a) a chapter from a book; or

   (b) an article from a periodical or newspaper; or

   (c) a short story, short essay or short poem, whether or not from a collective work; or

   (d) a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

C. Copying for Classroom Use

The reproduction or phonorecording of copyrighted works for classroom or teaching laboratory purposes, such as criticism, comment, teaching, scholarship, or research, is permitted, if all of the following minimum fair use standards for permissible copying are observed:

1. Multiple copies prepared for class distribution do not exceed one copy per student in the particular course.

2. The copying meets the tests of brevity described in the following guidelines:

   (a) With respect to poetry, "brevity" is deemed to mean a complete poem if less than 250 words and if printed on not more than two pages or, if from a longer poem, an excerpt of not more than 250 words.

   (b) With respect to prose, "brevity" is deemed to mean either a complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. These limits are not violated by the completion of an unfinished line of a poem or of an unfinished prose paragraph.

(c) With respect to illustrations, "brevity" is deemed to mean one chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(d) With respect to "special" works (i.e., certain works that combine language with illustrations, sometimes intended for children, and that fall short of 2,500 words in their entirety), "brevity" is deemed to mean an excerpt comprising not more than two of the published pages and containing not more than 10% of the words found in the text itself.

3. The copying meets the tests of spontaneity as described in the following guidelines:

(a) The copying is at the instance and inspiration of the individual who orders the reproductions or phonorecords to be prepared and distributed.

(b) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission from the owner of the copyright.

4. The copying meets the cumulative effect tests described in the following guidelines:

(a) The copied material will be used in only one course offered in the college in which the instructor ordering the copies holds an academic appointment.

(b) Not more than one short poem, article, story, essay or two excerpts may be copied from works by the same author, nor more than three from the same collective work or periodical volume, during the same quarter or semester.

(c) Not more than nine instances of such multiple copying shall be ordered for any one course during the same quarter or semester.

(d) The limitations stated in (b) and (c) do not apply to current new periodicals and newspapers and current news sections of other periodicals.

D. Copying of Music

Music may be reproduced by copy or phonorecord for educational use if the following minimum fair use guidelines are satisfied:

1. Emergency copying is permitted to replace purchased copies which are not available for an imminent performance, provided that purchased replacement copies shall be substituted in due course at the earliest reasonable opportunity.

2. For academic purposes other than performance:

   (a) Single or multiple copies of excerpts of works may be made provided that the excerpts do not comprise a part of the whole which would constitute a performable unit, such as a selection, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per student.

   (b) A single copy of an entire performable unit (section, movement, aria, etc.) that is (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of scholarly research or in preparation to teach a class.

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exists.

4. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by the university or an

individual teacher for the purpose of constructing aural exercises or examinations if the copy is to be retained by the university or individual teachers. (The foregoing pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

E. Off-air Recording

1. Off-air recording of any television broadcast (except pay television) by a media services unit of the university is permitted provided that:

   (a) the recorded program is retained by the university unit which recorded it,

   (b) the recorded program is retained no more than forty-five (45) calendar days after the date of recording, and

   (c) upon conclusion of the retention period, all off-air recorded programs are erased or destroyed.

2. Off-air recording of television programs may be made only at the request of and used by individual instructors at the university provided that:

   (a) the recorded program is recorded no more than one time at the request of the same teacher;

   (b) the recorded program is used once in the course of relevant teaching activities and is repeated once only when instructional reinforcement is necessary within ten days of the taping;

   (c) recorded programs are shown in classrooms and similar places devoted to instruction within a single building, cluster or campus, or in the homes of students receiving formalized home instruction;

   (d) recorded programs are used only during the first ten days of the forty-five day retention period.

F. Computer Programs (Software)

1. The making of an exact copy or adaptation of a software package by a university department or unit which owns the copy is permitted provided that:

   (a) the new copy or adaptation is made as an essential step in the utilization of the software in conjunction with the machine, or

   (b) a new copy or adaptation is made for archival purposes (not for use on any other machine) and will be destroyed when the original software is no longer in use.

G. Copying by University Libraries

1. General reserve desks may circulate single reproduction copies of library-owned copyrighted materials, provided that in the preparation of such circulating copies, library personnel do not exceed the standards for permissible copying set forth in Section C, above.

2. With respect to interlibrary loans, university libraries as borrowing libraries shall keep and retain records of filled loan requests for three full years following the end of the calendar year in which the requests were made in order to insure that during said period of three years:

   (a) The library did not request and receive more than five articles from any copyrighted periodical title published within the five years immediately prior to the date of a request; and

   (b) the library did not request and receive more than five copies of or from any given copyrighted work, including a collection of copyrighted works, during the entire period such material was protected by copyright.

3. University libraries as lending libraries may make isolated and unrelated reproductions of a single copy of the same copyrighted materials on separate occasions as long as the libraries and their personnel

are not aware of and have no reason to believe they are engaging in related or concerted reproduction of multiple copies.

4. University libraries shall refuse:

   (a) to fill an interlibrary loan request where prior contractual obligations prohibit copying of such copyrighted material;

   (b) to honor a request from a borrowing library which has not verified on its order form that the request conforms to the copyright law and guidelines.

5. For the purpose of preserving and maintaining library collections, university libraries are permitted to make:

   (a) facsimile reproductions of unpublished works that are currently in the library-owned collection for purposes of preservation, security, or deposit in another library; and

   (b) a copy of a published copyrighted work to replace a work that is damaged, deteriorating, lost or stolen, if:

      (1) the library determines, after a reasonable effort, that an unused replacement cannot be obtained at a fair price, and

      (2) the copy includes a notice of copyright.

6. Permissible copying by university libraries does not extend to reproduction of copyrighted works solely in anticipation of loss or damage.

H. Prohibitions

In addition to compliance with applicable limitations on uses of copyrighted materials as provided herein, faculty and staff are expected to refrain from any of the following actions which are specifically prohibited by law:

1. Books and periodicals

Unless authorized in writing by the owner of the copyright to any book or periodical:

(a) Copying may not be used to create, or to replace or substitute for, anthologies, compilations or collections of copyrighted works. Replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

(b) There shall be no copying of or from copyrighted works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests, test booklets and answer sheets, and like consumable material.

(c) Copying may not:

(1) be used as a substitute for the purchase of books, publishers' reprints or periodicals;

(2) be directed by higher authority;

(3) be repeated with respect to the same item by the same teacher in successive quarters or semesters.

(d) No charge may be made to a student for a single copy of copyrighted materials beyond the actual cost of reproduction.

2. Educational uses of music

Unless authorized in writing by the owner of the copyright to any music:

(a) Copying may not be used to create, or replace or substitute for, anthologies, compilations or collective works.

(b) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests and answer sheets, and like material.

(c) Copying may not be used for the purpose of performance, except as permitted for emergency copying under Section D 1.

(d) Copying may not be used as a substitute for the purchase of music, except as permitted under Sections D 1 and D 2, above.

(e) Copying is not permitted without inclusion of the copyright notice which appears on the printed copy of the music.

3. Off-air recording

Unless authorized in writing by the owner of the copyright in any television program:

(a) Television programs may not be regularly recorded in anticipation of instructor requests by any media services unit of the university.

4. Computer Programs (Software)

Unless authorized in writing by the owner of the copyright in any computer program:

(a) Copying computer programs may not be used as a substitute for purchase.

I. Exclusive Rights

1. University faculty and staff members are expected to recognize and observe the exclusive rights of copyright owners.

2. This policy statement shall be construed liberally to carry out the dual purposes for which specific limitations upon these exclusive rights were written into the law:

(a) to promote and facilitate educational uses of copyrighted materials, and

(b) to reduce incidences of copyright infringement.

3. Under federal law (17 U.S.C., Section 106), the owner of copyright has the exclusive rights to do and to authorize any of the following:

   (a) to reproduce the copyrighted work in copies or phonorecords;

   (b) to prepare derivative works based upon the copyrighted work;

   (c) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

   (d) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to perform or display the copyrighted work publicly.

V. PROCEDURES

A. Posting Notices and Warnings

Responsibility for assuring that required notices and warnings are properly posted or affixed under Section IV A rests with the cognizant vice presidents.

B. Enforcement of Minimum Compliance Standards

1. Development of operating practices to assure compliance with minimum standards for copying rests with line management personnel, under the direction of the cognizant vice presidents.

2. Operating practices for complying with legal requirements relating to performances of copyrighted musical, literary, and dramatic works shall be initiated by the relevant university operating units under the direction of the cognizant vice president.

Subject COPYRIGHT POLICY: COPYING OF COPYRIGHTED WORKS (continued)

3. Payment of royalties for copying or performance of copyrighted works, where required in the course of university business, shall be charged to regularly budgeted departmental funds.

4. In the event that a determination of copyright infringement by a court of competent jurisdiction results in the imposition of a final judgment imposing damages, costs, or other penalties upon the university, or upon any university officer or employee for acts or omissions in the scope of employment, any resulting loss to the university shall, except where otherwise required by law, be payable from funds budgeted for the use of the responsible operating unit if such loss was reasonably avoidable by compliance with this Policy and Procedure statement.

5. Questions as to the interpretation of this Policy and Procedure, or as to other aspects of copyright law, should be addressed to the Office of the President, extension 5113.

Approved: Institutional Council 1/16/78.

Editorially revised: September 27, 1985

Specialized Policies

UNIVERSITY OF UTAH

POLICY AND PROCEDURES MANUAL

No. 6-6	Rev. 1
Date November 8, 1984	
Page 1 of 9	

Subject COPYRIGHT POLICY: PERFORMANCE OR DISPLAY OF COPYRIGHTED WORKS

I. PURPOSE

To declare the university's policy regarding compliance with provisions of the Copyright Revision Act of 1976 concerning performance or display of copyrighted works.

II. REFERENCE

Policy and Procedure No. 6-5, Copyright Policy: Copying of Copyrighted Works.

III. DEFINITIONS

A. Seating capacity means:

(1) The total number of seats permanently affixed in the facility where a musical attraction is performed, plus any temporary seats added for a particular performance; or

(2) the total number of seats made available for a particular musical performance if the seating capacity of the facility has been altered to accommodate the performance, e.g., certain seats "roped off."

(3) The total number of persons attending a particular performance if the site does not have formal seating, e.g., ballroom or outdoors.

B. Full-Time Equivalent Enrollment (FTE) shall mean the sum of all full-time undergraduate and graduate students and the full-time equivalent of all part-time students calculated pursuant to the methods set forth and reported by the university to the Higher Education General Information Survey (HEGIS).

C. University premises means the buildings and grounds of the university campus, or of any other facilities leased, engaged, or controlled by the university, or of any organization (including any fraternity, sorority, social club or similar organization affiliated with the university) located off-campus but functioning under the university's auspices primarily for the benefit of the university's students. University "premises" shall also mean the facilities used to accommodate performances of music by persons and groups of persons organized or operating under the authority of the university, where the performance is offered or sponsored by a governmental agency or nonprofit organization.

D. Notice of objection is a written notice signed by the copyright owner or an authorized agent, for the purpose of preventing a noncommercial performance of a nondramatic literary or musical work. To be legally effective, the notice must be served on the person responsible for the planned performance at least 7 days prior to the performance, and must state the reasons for the objection.

E. Dramatic rights, frequently called "grand rights," is a term referring to the rights of a copyright owner whose work is considered dramatic in nature, under which the owner has the exclusive right to perform, display, or present such copyrighted work publicly. Examples of dramatic works that are subject to dramatic rights include, but are not limited to, plays, ballets, operas, operettas, oratorios, pantomime, revues, musical comedies, sketches, and dramatic scripts designed for radio and television broadcast.

F. Classroom means a place devoted to instruction, including a regular classroom, teaching laboratory, studio, workshop, gymnasium, training field, library, stage of an auditorium, or an auditorium itself when actually used for systematic instructional activities.

G. Face-to-face teaching activities are defined as instructional performances and displays that are not transmitted by electronic means from other locations. This term does not require that the teacher and student be able to see each other, although it does require their simultaneous presence in the same general place. It excludes broadcasting or other transmissions from a remote location into a classroom, whether by radio or television on open or closed circuit.

H. Exempt performance or display means a performance, presentation, or display for which permission from and/or payment to the copyright owner are not required.

I. Nonexempt performance or display means a performance, presentation, or display that is subject to licensing and payment of royalties, and for which permission from the copyright owner or duly autorized agent is required.

J. Public performance or display is a performance, presentation, or display at a place open to the public, or at any place where a substantial number of persons outside of the normal circle of a family and its social acquaintances is gathered. Performances or displays at "semi-public" places such as clubs, lodges, factories, summer camps and schools are considered public in nature.

K. Perform means to recite, present, render, play, dance, or act, either directly or by means of motion pictures or other mechanical or electronic device or process.

L. Display means to show a copy of a work, in whole or in part, either directly or by means of film, slide, television image, or any other mechanical or electronic device or process, and, in the case of a motion picture or other audiovisual work, includes the showing of individual images nonsequentially.

M. Transmission program means a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

N. Ephemeral recording means a copy or phonorecord of a work made for the purpose of later transmission by a broadcasting organization legally entitled, either by license from the copyright owner or pursuant to statutory exemption, to transmit the work.

O. Lawfully made copy means a copy obtained pursuant to permission from the copyright owner or a valid provision in a lease agreement, purchase contract, or other agreement.

IV. POLICY

A. Exempt Performance or Display of Copyrighted Works

1. Classroom Instruction

The exempt performance or display of copyrighted work is authorized on university premises if the performance or display is:

(a) in the course of face-to-face teaching activities;

(b) in a classroom; and

(c) in the case of a motion picture or other audio-visual work, is presented by means of a lawfully made copy.

This exemption does not permit the unauthorized reproduction of copies or phonorecords for purposes of classroom performances or displays in violation of the university's Copyright Policy, PPM No. 6-5.

2. Instructional Broadcasts

(a) The exempt reading or presentation of a nondramatic literary or musical work, or the exempt display of a work by or in the course of an instructional broadcast transmission is permitted if the performance or display is:

(1) a regular part of systematic instruction;

(2) directly related and of material assistance to the teaching content of the transmission; and

(3) is made primarily for reception in classrooms.

The reading of a nondramatic literary work under this exemption does not extend to acting it out in dramatic form without permission from the copyright owner. See paragraph (c).

(b) In connection with a transmission authorized under paragraph (a) above, the cognizant operating unit of the university may make not more than 30 copies or phonorecords and may use such ephemeral recordings for transmitting purposes for not more than seven years after the initial transmission if:

(1) no further copies or phonorecords are reproduced from the authorized 30 copies originally made; and

(2) only one copy or phonorecord is preserved, exclusively for university archival purposes, and the rest are destroyed after the expiration of the seven year period.

Subject COPYRIGHT POLICY: PERFORMANCE OR DISPLAY OF COPYRIGHTED WORKS (continued)

(c) The performance of a dramatic musical work, such as opera or musical comedy, or of a dramatic work, motion picture, or other audiovisual work, by or in the course of a transmission is permitted only if permission from the copyright owner or duly authorized agent is obtained.

(d) The performance of a nondramatic literary work is permitted by or in the course of a transmission specifically designed for, and directed to, blind and other sight or hearing impaired persons if:

(1) the broadcast is made without any purpose of direct or indirect commercial advantage; and

(2) the broadcast is made through the facilities of KUED-TV, KUER-FM, or other noncommercial educational broadcast station, or a cable transmitting system.

(e) In connection with the transmission of a performance under paragraph (d) above, the cognizant operating unit of the university may make 10 copies of the transmission if:

(1) copies are retained and used solely by the university's operating unit (or by a non-profit organization that is legally entitled to transmit such programs to the blind and deaf);

(2) the copies will be used solely for the same kind of transmission or for university archival purposes; and

(3) no charge is made for the use of the transmission or copies.

3. The exempt public performance of a nondramatic literary or musical work (except in a broadcast transmission to the public) is permitted if:

(a) The performance is provided without any direct or indirect admission charge, and no compensation is paid to any of its performers, promoters, or organizers; or

Subject COPYRIGHT POLICY: PERFORMANCE OR DISPLAY OF COPYRIGHTED WORKS (continued)

(b) all net proceeds derived through any direct or indirect admission charge are used exclusively for education, religious, or charitable purposes; and

(c) the copyright owner has not served a "notice of objection" concerning the performance at least 7 days in advance.

B. Nonexempt Public Performances of Copyrighted Dramatic and Nondramatic Literary and Musical Works

1. Licensing Requirement

All public performances (other than exempt performances) which are presented on university premises or are sponsored by the university or any of its operating units or affiliated organizations are required to be licensed by the copyright owner or an authorized agent who holds the right to grant such license.

(a) University departments or operating units that either regularly or occasionally use copyrighted dramatic literary or musical works for nonexempt purposes must obtain individual permission from and are responsible for making payment to the copyright owner or authorized agent prior to presenting such dramatic literary or musical works to the public.

(b) The public broadcasting of nondramatic musical works and graphic works by KUER-FM and KUED-TV is authorized only to the extent such broadcasts are covered by license agreements with the copyright owners, including such agreements entered into by the Public Broadcasting Service (PBS) and National Public Radio (NPR) with BMI, SESAC, ASCAP, and Harry Fox.

2. University-wide License Agreements

With respect to public performances of nondramatic musical works on university premises, the university has entered into general licensing agreements with BMI, ASCAP, and SESAC. Under the terms of these agreements the university may permit the public nondramatic renditions of separate musical compositions in the repertory of each licensing society in live or recorded performances at concerts and dances, parties at fraternities, sororities, or social clubs, during athletic events, in university cafeterias and eating places, and elsewhere on university premises.

3. Limitations in University-wide License Coverage

(a) The right to perform (live or recorded) nondramatic musical compositions is not assignable or transferable and is limited to the university's premises.

(b) The university's license agreements do not cover:

(1) Broadcasting, telecasting or transmission by wire or otherwise of renditions of musical compositions to persons outside of the university's premises.

(2) Performances by means of cable TV, cable radio, closed circuit radio or television stations, and jukeboxes.

(3) Performances of dramatic musical works, whether in the entirety or in part (one or more compositions), and whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation.

(4) Concert versions of dramatic musical works.

C. Payment of Fees

1. Fees required to be paid under the terms of license agreements shall be administered as follows:

(a) The university's general license fee, based on full-time equivalent student enrollment (FTE), is the responsibility of the Central Administration and will be paid out of a special budgeted account.

Subject COPYRIGHT POLICY: PERFORMANCE OR DISPLAY OF COPYRIGHTED WORKS (continued)

D. Copyright Coordinator

1. A Coordinator of Copyright Compliance has been appointed in the Office of the Executive Assistant to the President to assist university officers and directors of relevant operating units in complying with copyright laws and policies, and in fulfilling contractual requirements of applicable licensing agreements.

   (a) The Coordinator will administer a special budgeted account for the purpose of paying the general license fees for general use of music.

   (b) The Coordinator is responsible for establishing in cooperation with concerned operating units, a consolidated file of available concert programs and other lists of musical works performed at concerts and musical attractions under university auspices.

E. Reporting of Performances

Under the terms of the university's general license agreements, reports are to be submitted by relevant operating units as follows:

Programs or other lists of musical works which are prepared for distribution to an audience, or for the use or information of the operating unit must be forwarded to the Copyright Coordinator when available.

F. Prohibitions

In addition to compliance with applicable limitations on performances or displays of copyrighted materials as provided herein, faculty and staff are expected to refrain from any of the following actions which are specifically prohibited by law:

Film or other audiovisual works. Unless the owner of the copyright or authorized agent of the copyright owner transfers the rights in a particular film or audiovisual work to the university, or to the individual faculty member or support staff employee, films rented, leased or purchased for classroom showing may not be:

Subject COPYRIGHT POLICY: PERFORMANCE OR DISPLAY OF COPYRIGHTED WORKS (continued)

(a) transmitted by television or other devices or processes;

(b) copied, recast, transformed, or adapted, in whole or in part, for any purpose;

(c) shown to an audience who has paid for admission; or

(d) permitted to be used by any other institution or individual.

V. PROCEDURES

A. Payment of Fees and Reporting

Responsibility for assuring required payment of general license fees, and for filing of required reports of musical programs, rests with Copyright Coordinator.

B. Enforcement of Contractual Obligations

Development of operating practices to assure meeting contractual obligations rests with line management personnel, under the direction of the cognizant vice presidents.

Approved: Institutional Council 2/11/80.

Editorially revised: November 8, 1984

STANFORD UNIVERSITY

Copying of Computer Software

Draft

This Guide Memo describes Stanford's policy on the copying of computer software. Section headings are:

1. STATEMENT OF POLICY
2. GUIDELINES

1. STATEMENT OF POLICY

On December 24, 1986, President Donald Kennedy issued the following statement concerning the University's policy on the copying of computer software:

"There is a widespread perception that unlawful copying of computer software is a commonplace event in universities. Although I think this perception is unfair when applied to Stanford, I want nevertheless to make our policy clear: unlawful software copying is not permitted.

"We are all obliged to comply with valid laws and contractual obligations. With respect to intellectual property, that obligation is higher in an academic community than elsewhere; neither the ease of copying nor the high cost of software relieves us of it.

"Deans and department heads and directors are charged with ensuring that University faculty, staff and students are aware of and observe restrictions against unauthorized copying and use of computer software, as provided in the attached guidelines."

2. GUIDELINES

a. **Scope of Policy** — The proscription against unlawful software copying applies to all faculty, staff and students. The policy applies equally to all software for microcomputers, minicomputers, mainframes, or any other devices; it also applies to software documentation.

b. **Sanctions for Violation** — Disciplinary steps will be taken against individuals violating this policy in the course of University-related activities, or using University facilities to conduct or assist in unlawful copying, under the procedures appropriate to students, staff, or faculty as the case may be. For example, unlawful copying would be considered misconduct by members of the University staff, and in appropriately severe circumstances could result in discharge for cause. See also the Statement on Faculty Discipline, and the Regulations Governing Student Conduct and Procedures for their Enforcement.

The possible disciplinary actions for violation of the policy, such as termination of employment or student status, will depend on the facts and circumstances of each case and are ~~is~~ likely to include restitution to the copyright owner. In addition, individuals may be denied access to University computer or related facilities.

c. **Responsibility for Compliance**

- When software is acquired by the University, the using department is responsible for reading and adhering to the terms of the license agreement and preventing unauthorized copying.
- Supervisors should ensure that employees and other persons having access are advised of restrictions and do not make copies ~~impermissibly~~. without permission.
- Software purchased by individuals is the responsibility of the individual. Persons who knowingly aid in unauthorized copying also may be liable; e.g., by loaning software to another person with the intent that the borrower will make an unauthorized copy, or by knowingly allowing one's computer to be used for making an unauthorized copy.

d. **Notification** — Copies of this policy and these Guidelines shall be distributed to students periodically by the office of the Dean of Student Affairs. Supervisors are charged with ensuring that applicable employees are aware of this policy. Additionally, the following actions should be taken:

  (1) **Self-service Microcomputers** — All University self-service microcomputers (e.g., those in the libraries available for patron use) shall have on them, or nearby and visible to the user, a notice stating that unlawful copying is prohibited. The suggested form for such notice is: NOTICE: Copying software or documentation may be subject to the Copyright Law. Unlawful copying is prohibited.

  (2) **Software Lending Libraries** — University software lending libraries shall undertake appropriate measures to ensure that patrons are advised that copying of the loaned software is prohibited (unless the software is in the public domain or the owner has consented to copying). Such steps shall include all or some of the following: signed statements by the borrowers, posted signs, labels on software and documentation, and warnings displayed on the computer screen.

  (3) **Software Labels** — Supervisors shall ensure that labels and notices proscribing copying are not removed from software acquired by the University and that copies lawfully made include duplication of such labels and notices.

e. **Further Information** — A question and answer sheet containing frequently asked questions is available from the Office of the Vice President for Information Resources (723-0977). Further questions about software copying should be referred to Information Resources or to the General Counsel's Office (723-1324 or HK.IXB@Forsythe)

CAMPUS REPORT 3/18/87

Guidelines on software copying issued

STANFORD UNIVERSITY

1987

The following information elaborates upon an earlier version of the preceding Guide Memo, "Copying of Computer Software."

FOR THE RECORD

These official University guidelines on software copying were approved by President Donald Kennedy before he went on sabbatical. They were prepared in consultation with Information Technology Services (ITS), Academic Computing and Information Systems (ACIS), and the General Counsel's Office.

INFORMATION

What legal protections apply to software?

Copyright law protects software against copying and distribution, even in the absence of a license agreement. To preserve copyright protection on software distributed to the public, however, the copyright owner normally must include a copyright notice on the software or otherwise notify you that copyright protection is being retained. The symbol of a "C" enclosed by a circle indicates that copyright protection applies. This notice may be displayed on the video screen when the software is used, or may appear in the packaging or documentation.

Software may be further protected by contract law. The license agreement with the software vendor may specify, for example, that the software may not be disclosed to others or that multiple-use (e.g., time sharing) is prohibited. Some software is distributed under a license that you agree to by opening the package and using the software.

What copying is permitted?

You can make a backup copy solely for your own use in case your master becomes unusable. If your computer has a hard disk, you can copy the software onto a hard disk and retain the floppy version as a backup. (But you should not loan the floppy to another user.) Generally, you cannot make a copy for another person's use. Also, most license agreements prevent multiple use of software when only one copy has been paid for. Transmission of the software, e.g., from a central disk to a networked or remote user, generally is prohibited.

Some license agreements may permit copying. For example, the SAMSON program distributed by ITS permits making copies for another member of the Stanford community. Also, some software permits the making of multiple copies for your own use — read the license agreement that comes with the program.

You can make and distribute whatever copies you want if the software is in the public domain (no copyright protection and no restrictive clauses in a license agreement or notice).

Can software be loaned or sold?

Unless the license agreement is to the contrary, it probably is OK to assume that you can loan the software or "sell" it to another person provided the recipient agrees to be bound to the license agreement. But both of you cannot use it at the same time nor should the borrower make any copies. One rule of thumb is to assume that only one person at a time may use the software when one copy has been purchased from the vendor. It may be difficult to obtain trouble-shooting services and updates from the vendor, however, if you are not the registered owner of the copy of software.

Software acquired in the name of the University normally may be loaned or "sold" from one department to another unless the license is CPU-specific and so long as the prohibitions against copying and multiple users are observed.

Software is expensive. What is the University doing about it?

Paying the vendor for another copy of a software program usually is very expensive compared to making a copy yourself. Nevertheless, until the law is changed, you cannot make an unauthorized copy in violation of the vendor's legal rights. Additionally, software vendors invest significant time, money and creative effort in developing and marketing software; the license fees compensate them for the up-front investment and risks.

The University and the Bookstore are in the process of negotiating blanket, multiple-user and bulk-purchase licenses with vendors that hopefully will make some of the most popular software available at much lower cost.

What are the legal consequences of unauthorized copying?

Intentional violations of copyright law are federal crimes. Additionally, there may be liability for monetary damages for violation of copyright or breach of a license agreement. Therefore, unauthorized software copying is a serious matter.

Moreover, the impression — whether true or false — that the University is a place where rampant unauthorized copying occurs severely damages the efforts of the University to obtain blanket and bulk-purchase licenses.

UNIVERSITY OF ROCHESTER
EASTMAN SCHOOL OF MUSIC
ROCHESTER, NEW YORK 14604
Sibley Music Library

Administration (716) 275-3046
Reference and Rare Books (716) 275-5789
Circulation (716) 275-3018
Technical Processing (716) 275-3019

SIBLEY MUSIC LIBRARY GUIDELINES FOR PLACEMENT OF COPIED MATERIALS ON RESERVE

Effective 12/1/84

Prescript: There are no copying restrictions for works published prior to September 19, 1906 - they are in public domain.

Before copies of materials to be placed on reserve are made, the teacher of teaching department should first contact the Acquisitions Librarian to inquire whether or not the SML can purchase the published, printed or recorded materials.

The SML will not make or take requests for copies from or for teachers or students or staff; it is the teacher (or the teaching department) that must provide the Library with the copy to be placed on reserve with the exception of copying from music journals for which the Library has a blanket permission from the © owner on file.

All copied materials will be put on reserve on a one-time-use basis unless a © owner's permission has been secured for the Library's file.

A. GUIDELINES FOR NON-MUSIC MATERIALS (Books and periodicals, etc.)

1. A single copy of a small part of a copyrighted work (no more than an article from an issue of a periodical, chapter from a book, etc.) may be placed on reserve.
2. Multiple copies* of a small part** of a published work may be placed on reserve without authorization from the copyright owner, provided there is not time to acquire permission. Repetitive copying requires written permission obtained by or for the teacher and is to be retained by the SML during the time the material is on reserve.
3. Unpublished and prepublished materials are equally subject to copyright protection, subject to the same guidelines as in A.1 & 2, except that the © owner's permission for reproduction must first be obtained by or for the teacher and a copy of such permission will be retained by the SML while the material is on reserve.

B. GUIDELINES FOR MUSIC

1. Reproduction and distribution of music is not permissible under Section 108 of the new Copyright Act; nevertheless, provisions of Section 107 (Fair Use) may apply. In general, single or multiple reproductions lawfully made for scholarly or research purposes by or for the teacher of a small part** of a published work may be placed on reserve. Unpublished and prepublished materials are subject to the same requirements as in A.3.
2. A single copy of a small part** of a phonorecord (in the form of a tape, etc.) made by or for the teacher may be placed on reserve subject to the same requirements as in A.1. & 3.

C. GENERAL GUIDELINES

1. Each copy must show the copyright notice and the source of the material.

   Examples:

a. From a book	© 1963 W.W. Norton & Company (from Pincherle, Marc. The World of the Virtuoso)
b. From music	© 1966 Henri Elkan (from Bach, J.S. March, Chorale & Bourree for 2 trumpets, horn & trombone. Arranged by Amedeo de Filippi)
c. From a periodical	© 1977 The American Musicological Society (from The Journal of the American Musicological Society, 30 (Spring 1977)
d. From a phonorecord	℗ 1976 Musical Heritage Society (from 18th Century Trumpet Music)

2. The SML will return all non-library owned materials to the owner of the copy at the end of the semester.

* Generally not to exceed five copies and the SML or teacher should own a copy of the work.

** Less than a performable unit such as a section, movement, or aria and less than 10% of the work.

NB: Copies of the new Copyright Act (P.L. 94-553) and adjunct documents may be consulted in the Reference Center of the SML. The call number is: Reference Room Z 642 U58.

General Ownership Policies

THE TEXAS A&M UNIVERSITY SYSTEM
ADMINISTRATIVE POLICY AND REPORTING MANUAL

SUBJECT: **COPYRIGHTS** C.10.4 [illegible]
April 22, 1985 Page 1 of 8

CONTACT FOR INTERPRETATION: Vice Chancellor and System Comptroller

---

I. PURPOSE AND SCOPE

The purpose of The Texas A&M University System copyright policy is to outline the respective rights which members of the faculty, staff and student body of the System Parts have in intellectual materials created while affiliated with the System.

II. GENERAL POLICY STATEMENT

Copyright is the ownership and control of the intellectual property in original works of authorship that is subject to copyright law. Copyright ownership and the rights thereof are defined by Federal law. It is the policy of The Texas A&M University System that all rights in copyright shall remain with the creator of the work unless the work is supported by a direct allocation of funds through the System or one of its components for the pursuit of a specific project, is commissioned by the System or one of its components, or otherwise subject to contractual or legal obligations, or is a "work made for hire" as that term is defined by the Copyright Law.

A "work made for hire" is:

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a

This policy statement supersedes all previous policy statements on this subject.

contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a "work made for hire." An "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

For more information of a general nature, see Attachment A to this policy.

III. OWNERSHIP

The System encourages the preparation and publication of copyrightable works that result from teaching, research, scholarly and artistic endeavors by members of the faculty, staff and student body of the System Parts. Because of advancing technology, new forms of educational materials are being developed that require a substantially greater level of direct support from the System than does the writing of a "traditional" textbook and the like.

A. Copyright ownership of all material (including software) that is developed in the course of or pursuant to a sponsored research agreement shall be determined in accordance with the terms of the sponsored research or other agreement, or, in the absence of such terms, the copyright shall become the property of the System Part.

B. Copyright ownership of all material (including software) that is developed with the significant use of funds, space, hardware, or facilities administered by a System Part, including but not limited to classroom and laboratory facilities, but without any System Part obligation to others in connection with such support, shall reside in the System Part. The System recognizes and affirms the traditional academic freedom of its faculty and staff to publish freely without restriction. In keeping with this philosophy, the System and its Parts will not construe the provision of office or library facilities as constituting significant use of System funds, except for those situations where the funds were paid specifically to support the development of such material. In keeping with academic tradition the System does not claim ownership of books, articles and similar works, the intended purpose of which is to disseminate the results of academic research or scholarly study. Such works include those of students in the course of their education (except as covered by sections C. and D. below). The System claims no ownership of popular nonfiction, novels, poems, musical compositions or other works of artistic imagination that are not institutional works. If title to copyright in such works vests within the System or any of its Parts by law, the System or its Parts will, upon request and to the extent consistent with its legal obligations, convey copyright to the creators of such works.

C. Copyright ownership of works generated by research that is performed in whole or in part by any person with financial support in the form of wages, salaries, stipends or grants from funds administered by a System Part shall be determined in accordance with the terms of the support agreement, or in the absence of such terms shall become the property of the System Part.

D. Copyright ownership of works generated by research performed in whole or in part utilizing equipment or facilities provided to the System Part under conditions that impose copyright restrictions shall be determined in accordance with such restrictions.

IV. REVENUE SHARING

A. Authors

Authors of intellectual works that are not owned by the System or any of its Parts, or to which the System or its Parts have relinquished any ownership claim, own the copyrights in their works and are free to publish them, register the copyright and receive any revenues which may result therefrom.

B. The Texas A&M University System

1. Royalty income received by the System Parts through the sale, licensing, leasing or use of copyrightable material in which a System Part has a property interest will normally be shared with the Author and the System Part where the material originated. Authorship for this purpose shall be determined by the director or department head, as appropriate. The gross royalties received by

the System Part will, in most instances, be distributed under a formula of 50 percent to the Author and 50 percent to the System Part. In the event of multiple authors, the proper distribution of the 50 percent share shall be determined by the director or department head, as appropriate. The disposition of the 50 percent dedicated to the System Part is within the discretion of the Chief Executive Officer of the Part.

2. In the event that an Author contributes a personal work to the System or one of its Parts, a written agreement accepting such contribution shall be executed. The terms of the agreement shall include a statement governing the division of royalties between the System or Part and the Author.

3. In cases of extramural funding, the terms of the funding agreement shall govern the division of any royalties that may result from commercialization of materials resulting therefrom. In the event that the funding agreement vests royalty rights in the System or any of its Parts, and does not provide any royalty share for the Author, the Author shall be entitled to the same proportionate share he or she would have received if the work had not been extramurally funded. Such a royalty payment to the Author, however, may not violate the terms of the funding agreement. Such share shall be a proportion of whatever share is owned by the System or its Parts under the terms of the funding agreement and this policy.

V. USE OF UNIVERSITY OR AGENCY SPONSORED MATERIALS

Prior to the use of a copyrighted work outside of the System, the System Part will consult with the Author, or provide a reasonable opportunity for such consultation, with respect to its use within the System. When unresolved matters on use occur, they shall be referred to the Chief Executive Officer of the System Part or his/her designee for resolution.

VI. REVISION OF MATERIALS

Materials owned by the System or any of its Parts under the terms of this policy shall not be altered or revised without providing the Author a reasonable opportunity to assume the responsibility for the revision. If the Author declines the opportunity to revise such material, the assignment of responsibility for the revision will be made by the Chief Executive Officer of the System Part or his/her designee in consultation with the appropriate department or office.

VII. WITHDRAWAL OF MATERIALS

Materials owned by the System or any of its Parts under the terms of this policy shall be withdrawn from use when the System Part in consultation with the Author deems such use to be obsolete or inappropriate. No withdrawal or other discontinuance shall take place that would violate the terms of any licensing or other agreement relating to the materials.

The System or any of its Parts may release to the Authors the right to any work copyrighted in the name of the System or any of its Parts.

VIII. WARRANTY

An Author of any work owned by the System or any of its Parts under the terms of this policy shall, prior to the filing of the application for registration with the Copyright Office, Library of Congress, sign a statement that he/she warrants that, to the best of his/her knowledge, the work does not infringe on any existing copyright or other legal rights; that work not identified as quotations is the expression or creation of the Author; that necessary permission for quotation and the like has been obtained; and that the work contains no libelous material nor material that invades the privacy of others.

IX. PROCEDURES

A. The System Patent and Copyright Committee of The Texas A&M University System shall be responsible for administering this policy. Duties of the Committee shall include filing appropriate registration forms and supporting documents with the Copyright Office, Library of Congress, negotiating and drafting licenses and other royalty agreements, drafting necessary agreements for specially commissioned works, and determining the applicability of this policy and appropriate law to copyrightable materials. All referrals to the committee shall follow established procedures.

B. The responsibility for commercial marketing of copyrighted materials and for maintaining appropriate fiscal records is assigned to the System Patent and Copyright Committee in coordination with System Parts.

C. All expenses of copyright registration shall be borne by the System Part.

D. All material owned by the System or any of its Parts under the terms of this policy shall be protected by notice of copyright in the name of the System Part. The proper form of such notice is as follows:

Ⓒ 19____, system part name. All rights reserved.

The date should be the year in which the work was completed or in which it was published, whichever is earlier. The name of the System Part should be spelled out in its entirety.

E. License agreements made with third parties under this policy shall be submitted for confirmation by the Board of Regents.

****

AUTHORITATIVE REFERENCES:

Sec. 101-810, 17 USC, Copyright Act of 1976

SEE ALSO:

APRM B.4.3,	OUTSIDE EMPLOYMENT AND CONSULTING
APRM C.10.2,	ADMINISTRATION OF SPONSORED PROGRAMS - RESEARCH AND OTHER
APRM C.10.3,	INVENTIONS AND PATENTS
APRM D.1.3,	USE OF COPYRIGHTED WORKS (forthcoming)

Questions and Answers on the Copyrights Policy

The Texas A&M University System policy on copyrights has been designed to encourage the creation of copyrightable works and at the same time balance the rights and duties of both the Author and the System Parts.

The following questions and answers have been prepared to aid in understanding of the policy and in expediting implementation.

1. What is a copyright?

A copyright is a right granted by statute or by common law to the Author or Originator of certain works whereby the Author is vested, for a limited period, with the sole and exclusive privilege of making copies of the work and publishing and selling them. In the United States, this area is completely covered by Federal law. (Title 17, **United States Code**)

2. When does a copyright come into being?

Under the 1976 Copyright Act, copyright protection attaches from the moment a work is "fixed" in a copy or recording for the first time. "Fixed" means that the work must be contained in a tangible medium of expression so that it is "sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." (17 **U.S.C.**, Section 101) It is no longer necessary to obtain formal registration of a copyright for a work to be protected. However, registration carries with it numerous procedural legal advantages, as well as making it easier to negotiate a license with a potential publisher of the work.

3. Who owns the copyright in a work?

Ownership of a copyright generally lies in the Author or Creator of the work, with one major exception. The Copyright Act excepts "works made for hire" from this general rule. These are defined as:

(1) A work prepared by an employee within the scope of his or her employment; or

(2) A work specially ordered or commissioned for use as a contribution to a collective work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree

> in a written instrument signed by them that the work shall be considered a work made for hire. (17 U.S.C., Section 101)

Works made for hire belong to the employer or other person for whom the work is done. The language in Section 101(2) is designed to protect the rights of independent contractors who are commissioned for the creation of specific types of named works.

4. What is a "work" that can be copyrighted?

Copyright protection extends only to certain types of created works. The statute lists the following: literary works; musical works including accompanying words; dramatic works including accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and audiovisual works; sound recordings; and computer programs and documentation.

5. What rights are protected by a copyright?

Copyright protects the right to print and reprint copies of a work, to sell or distribute copies, to transform or revise and to perform or display the work to the public. All of these rights are subject to certain limitations, making none of them absolute. Copyright does not protect ideas, procedures, processes, systems, methods of operation, concepts, principles or discoveries, regardless of how they are described, explained, illustrated or embodied. Simply put, copyright protects the expression of an idea, not the idea itself.

6. Under this policy, who will own the copyright in my work?

That depends upon a number of factors. If the work is done entirely or almost entirely on your own time and without significant use of funds, space or facilities administered by a System Part, and there is not a previously existing contract for you to create the work (assuming it is within one of the named categories of Section 101(2), it will belong to you. The policy states that work done under sponsored research agreements will be governed by the terms of such agreements, and in the absence of any such terms, it will belong to the System Part. In that case, you will be entitled to the same share that you would have if the project were entirely System-funded. The policy specifically states that the System is not interested in owning the copyright in several types of works, including popular non-fiction, novels and textbooks, as well as several other types.

7. Who determines whether my work is a work made for hire?

The System Patent and Copyright Committee is given the responsibility of administering the program, including making the initial determination of ownership rights. The criteria for such determination are based upon the statute, case law and an investigation of all of the relevant facts surrounding the creation of the work. In general, the more System time and funds spent on the work in relation to its whole value, the more likely it is to be viewed as belonging to the System. Each case will be determined upon its own merits, and the more information that is provided at the time the initial inquiry is made, the more quickly the determination can be made. The overriding factor in all determinations will be fairness to both the Author and the State of Texas. Input from all sources is sought and appreciated.

8. Once I have created a work that I think is eligible for copyright protection, and that is not clearly excluded from System ownership under the policy, what should I do?

A request for assistance in registering the copyright should be directed through your department head to your academic dean (or Director, as appropriate). The request should describe the nature of the work and include the names of all authors. If practical, a copy of the work should be attached. A statement of the circumstances surrounding the creation of the work should be included. For example, if the work is a computer program which you designed on the computer at the DPC using computer time paid for by your department, this information should be included. The request should be addressed to the System Patent and Copyright Committee. Once it is received, the committee will evaluate it and contact you to discuss your request and gather more information needed for the filing of a registration. If your work does not qualify for System ownership under the policy, the committee will inform you of this fact by letter and, upon your request, will provide a release of any rights which the System may have.

9. What if the work does belong to the System?

In that case, you would be notified of this fact. You will also receive notice when the registration is sent to Washington, D. C., and when it is received. Your name will be listed as an author of a work made for hire on the application for registration. According to the policy, you are entitled to 50 percent of any revenues received from the commercialization of your work. The System Part for which the work was done receives the other 50 percent.

10. I have created a work that does not qualify for System-ownership, but I would like to donate it to the System. What should I do?

A request as described above should be sent to the System Patent and Copyright Committee. If your System Part agrees to accept the work, documentation of this acceptance should be provided. The acceptance will include the provision for royalty revenues to be divided between you and the System Part, if you so desire.

11. The policy says that all costs of obtaining copyright registration will be borne by the System Part. What kinds of costs are there?

In the vast majority of cases these costs include only the $10.00 registration fee and the costs of duplicating the necessary copies of the work for filing. In some extraordinary cases, other costs may be incurred. At this time, all legal work on copyrights is done by the office of General Counsel as a part of its function of providing legal service to the System.

Ownership Policies for Specific Materials

UNIVERSITY OF WASHINGTON

1983

Section 2. Copyright Policy

A. Background.

The University encourages the publication of scholarly works as an inherent part of its educational mission. In this connection, the University acknowledges the right of faculty, staff, and students to prepare and publish, through individual initiative, articles, pamphlets, and books that are copyrighted by the authors or their publishers and that may generate royalty income for the authors.

The variety and number of copyrightable materials that may be created in the university community have increased significantly in recent years as have the author-university-sponsor relationships under which such materials are produced. Therefore, the following statement of University policy on ownership and use of copyrightable materials is provided to clarify the respective rights of individuals and the University in this increasingly important area. The policy will be administered by the University's Office of Technology Transfer.

B. General Statement of University Policy on Ownership and Use of Copyrightable Materials

University faculty, staff, and students retain all rights in copyrightable materials they create, except when special circumstances or contractual arrangements prevail. This right of ownership is subject to the following exceptions and conditions.

1. Grant and Contract Limitations. Conditions regarding rights in data or restrictions on copyright privileges contained in sponsored grants, contracts, or other awards are binding on the University and on faculty, staff, or student authors.

2. University-Owned Materials. Materials shall be "University-owned" within the meaning of this policy statement if the author was commissioned in writing by the University (or one of its colleges, schools, departments, or other divisions) to develop the materials as a part of the author's regularly compensated duties, as for example, released time arrangements in the case of faculty members. As to a faculty member, "commissioned in writing" specifically does not refer to his or her general obligation to produce scholarly works.

3. University-Sponsored Materials. Materials shall be "University-sponsored materials" within the meaning of this policy statement if the author developed the materials in the course of performance of his or her normal duties and utilized University service centers (such as the Computer Centers, the Audio-Visual Services unit, or departmental service centers). As to a faculty member, "normal duties" does not include his or her usual scholarly activity unless it involves extensive uncompensated use of University service centers.

4. Written Agreements. It is desirable to reach agreement in writing as to the rights of the University and of participants before work begins whenever (1) a question exists as to whether the materials will be University-owned or University-sponsored, or (2) copyrightable materials are likely to result from the joint efforts of persons in academic departments and University service departments. As to jointly-developed materials, determination of rights in written form shall be accomplished no later than prior to sale of the materials in question. Questions concerning the interpretation and administration of this policy shall be resolved in accordance with Section IV.

5. Proportional Ownership. In case of materials developed in substantial part under commission and in substantial part through other means, the materials shall be regarded as "University-owned" in an appropriate proportion. In the case of materials developed in substantial part during the course of normal duties and with use of University service centers and in substantial part through other means, the materials shall be regarded as "University-sponsored" in an appropriate proportion.

6. Royalty-Free Privileges to University. The University retains a right to royalty-free use of any copyrightable materials developed by University employees (other than books and materials available from a publisher through normal distribution channels) when the development of such materials was advanced through the use of University facilities, supplies, equipment, or staff services. This right exists even though the materials do not constitute University-owned or University-sponsored materials as defined above (e.g. where use of facilities by a faculty member was not extensive).

7. Student Writings. Students employed by the University in any capacity are covered by the terms of this policy. In addition, where a student receives financial aid or remuneration under a sponsored research, training, or fellowship program, his or her rights in copyrightable materials are limited by the terms of the University agreement with the sponsoring agency. The University has no ownership rights in copyrightable mate-

rials developed by students who are not employees of the University.

C. Types of Materials.

The types of materials to which this policy is intended to apply include:

1. Video and audio recordings, tapes, and cassettes.

2. Film, film strips and other visual aids.

3. Books, texts, study guides and similar published materials.

4. Computer programs when copyright rather than patent or trade secret protection is relied upon as the primary source of legal protection. (When the primary commercial value of a computer program lies in its transfer in limited quantities under arrangements of confidentiality, it shall be treated as unpatented technology and be subject to the University Patent and Invention Policy.)

5. Musical or dramatic compositions.

6. Other copyrightable materials.

D. Interpretation and Administration of Policy.

1. Committee. The President of the University shall appoint a Committee on University Sponsored and Owned Materials (hereafter "the Committee") consisting of five members, a majority of whom shall be chosen from the faculty. The President has designated the Director, Office of Technology Transfer, as the officer of the University to administer the provisions of this policy. That officer (hereafter "Director") shall be an additional non-voting member of the Committee.

2. Advice and Review. The Committee shall advise the Director on interpretations and applications of policy, and shall periodically review the policy set forth in this statement and recommend such changes to the President as the Committee deems desirable.

3. Distribution of Statement. When this statement becomes effective as University policy, the President's office shall see that all departments and administrative offices of the University are properly informed. Thereafter, the Director shall remind deans and department heads periodically of the existence of the policy, inform them about any significant interpretations of the policy, and invite comments or questions regarding it.

4. Duties of Director. The Director shall represent the University in negotiating agreements with authors or producers pursuant to this policy. She or he shall consult also with authors' or producers' department heads and the heads of production units involved in drawing up these agreements, and she or he shall sign or recommend all agreements for signing consistent with delegated authority. Where copyright coverage should be obtained on University-sponsored or University-owned materials, the Director will facilitate the copyright application. The faculty or staff member who is the author of University-owned or University-sponsored materials shall execute a written transfer of copyright to the University when necessary or appropriate.

5. Inquiries on Status of Materials. Any faculty or staff member who has a question as to whether or not particular materials will be considered University-owned or University-sponsored should initiate an inquiry to the Director as to their status. This inquiry, with all relevant facts, should be forwarded via the author's department head. Thereafter, the Director shall advise the author or producer as promptly as possible as to whether or not it appears that the materials should be regarded as University-owned or University-sponsored within the meaning of this policy. The Director's decision in such cases will be considered as an advisory opinion subject to final clarification when the work is completed. At that time, the faculty or staff member should either (1) indicate concurrence in the original decision, or (2) request that the question of rights be submitted for decision to the Committee. In the latter case, the decision of the Committee will be final unless the faculty or staff member requests arbitration of the question.

6. Arbitration. In the event of any differences between faculty or staff members, on the one hand, and the University Committee, on the other hand, and when the questions cannot be reconciled by direct negotiation, the matter shall be submitted for binding arbitration either to a single arbitrator agreed on by all parties or to a special three-person panel consisting of one person representing the faculty or staff member, one person representing the University, and a third person designated by the first two. Knowledgeable members of the University community will normally be chosen for such panels in order to expedite a decision and minimize cost. In the event costs are incurred, they shall be divided equally between the faculty/staff member and the University. Decisions of the panel will be binding on both parties. The panel shall have full access to any pertinent records over which the faculty/staff member or the University has jurisdiction.

E. Rights Involved in Use of University-Owned or University-Sponsored Materials.

1. Two categories of use are differentiated for purposes of this policy:

a. Internal use—or, use by any unit of the University for instruction or other educational purposes.

b. External use—or, use by other educational institutions, government and other nonprofit institutions, and use resulting from lease or other contractual arrangements for commercial distribution of the materials.

2. Use of University-owned or University-sponsored materials under this policy shall be subject to the following conditions:

a. Internal use

(1) Each instance of use of such materials within the University requires the approval of the author and the department or college unless advance approval is waived through a prior written understanding or the author's consent is implicit in the terms of the grant or contract supporting the work. Internal uses of such materials will not involve a transfer of funds between departments unless the lending department incurs incremental costs in order to make the materials available.

(2) As long as the author or producer of such materials remains an employee of the University, the author may:

(a) request reasonable revisions of the materials prior to any instance of internal use, or

(b) ask that the materials be withdrawn from internal use if revisions are not feasible.

In cases where the University has invested significant funds in the production of the materials and the author/producer is unable to agree with the department head on appropriate revision or withdrawal of materials, the question will be referred to the dean of the school or college for mediation.

(3) If the author or producer terminates employment with the University, then the University retains the right to continue internal use of the material unless the author/producer and the

University agree in writing on special conditions for subsequent internal use of the materials and the procedures for their revision.

b. External use

Licensing or sale of University-owned or University-sponsored materials for external use shall be preceded by a written agreement between the University and the author or producer specifying the conditions of use, and including provisions concerning the right of the author or producer to revise the materials periodically, or to withdraw them from use—subject to existing agreements—in the event revisions are not feasible.

F. Division of Royalties.

1. General Policy on Royalties. As to University-owned materials, all royalties and income should inure to the University and its schools, colleges, and departments as such materials are prepared in exchange for agreed compensation. As to University-sponsored materials, a sharing of royalties and income is appropriate because of the author's provision of creative efforts on the one hand and the University's provision of salary, facilities, administrative support, and other resources.

2. Royalties on Sales to Outside Users. Where University-owned or University-sponsored materials are to be sold or rented to outside users, the following guidelines pertaining to financial arrangements should be observed (subject to any limitations specified by granting agencies):

a. All incremental expenses related to the distribution of copies will be recovered from each sale or rental. Original costs for production of the materials shall be recovered only if and as agreed to in writing prior to preparation of the materials by the author and the academic departments and University service centers which incur those costs.

b. In the case of University-owned materials, royalty and other income from sale or use of the materials (after recovery of costs as specified in 1.) shall be divided one-half to the University and one-half to the school/college/department of the author or authors. The University share shall be used to promote research across the whole University and shall normally be administered by the Graduate School. The school/college/department share shall be allocated to the dean of the college or school, and may be used for research, education, and communications. At least 75% of this share should normally go to the author's department for use there according to departmental and college goals. The dean should have discretion in distributing the remaining 25% to promote activities according to the nature and needs of the college or school in question.

c. In the case of University-sponsored materials, royalty and other income from the sale or use of materials (after recovery of costs as specified in a.) shall be divided 50% to the author or authors, 25% to the school/college/department of the author or authors, and 25% to the University for the first $20,000 in cumulative net income; 30% to the author or authors, 20% to the school/college/department, and 50% to the University for that portion of cumulative net income above $20,000. In any given case covered by this paragraph c, the author may dedicate all or any portion of his/her allocation to the school/college/department, the Graduate School, or other unit. Such dedication must be entirely *voluntary* and confirmed in writing to the Office of Technology Transfer. The school/college/department share and University share shall be administered as specified in b.

d. In certain instances it may be advantageous to market University-owned or University-sponsored materials through outside commercial sources or the University Press. Net royalty income from such sources shall be divided as specified in b and c.

e. Royalty and other income from updating and revision of University-sponsored materials shall be treated as income and royalty from such University-sponsored materials, unless otherwise agreed to in writing by the author/producer and the University before preparation of the original materials. The cumulative net income from such upkeep or revision shall be separately computed on an annual basis for the purpose of applying the percentages in paragraph c.

G. Protection and Liability.

1. Protection. The Director shall investigate allegations of unauthorized use or copyright infringement of University-owned and University-sponsored materials and shall recommend appropriate action. If such action is started by the University, all costs of such action shall be borne by the University. All proceeds in excess of such costs shall be shared as provided in Section F. (subject to sponsoring agency limitations if a grant or contract is involved).

2. Liability. When there are allegations of violation of personal or property rights by the University, or by the author or producer of University-owned or University-sponsored materials copyrighted by the University, the University shall assume responsibility for the defense of any action and the satisfaction of any judgment rendered against the University or the author or producer.

BR, March 1969; Executive Order No. 36 of the President, June 1, 1972; revised October 3, 1977; September 26, 1983

University of Delaware Information Packet
on
Computer Software

The attached information packet on computer software comprises two parts: (1) the "University of Delaware Policy on Computer Software" and (2) an associated document, "Procedures for Administration of the University Policy on Computer Software," both of which were approved by the University Board of Trustees on May 23, 1985. The policy includes objectives, definitions, and responsibilities of the originator and the administration. The procedures cover such issues as determination of rights, arbitration of disputes, and distribution of income.

Please call the Office of Research & Patents at extension 2136 if you have questions about copyrighting or licensing computer software.

L. Leon Campbell - Provost
Robert D. Varrin - University Coordinator for Research
Charles H. Lemke - Consultant

UNIVERSITY OF DELAWARE
Newark, DE 19716

UNIVERSITY OF DELAWARE

POLICY ON

COMPUTER SOFTWARE

1. POLICY OBJECTIVES

The objectives of this policy and the associated administrative procedures are:

a. to preserve traditional University practices and privileges with respect to the publication of scholarly works;

b. to encourage faculty, staff, and students to develop software;

c. to foster the free and creative expression and exchange of ideas and comments;

d. to establish principles and procedures for equitably sharing income derived from computer software produced at the University in those cases where the University has an interest in the material; and

e. to protect the University's assets and imprimatur.

2. POLICY STATEMENT

It is the policy of the University that all rights in computer software shall remain with the creator of a work except where:

a. The work is a work made for hire and copyright vests in the University under copyright law (Title 17, USC, Copyrights, sections 101 and 201); or

b. The work is commissioned by the University; or

c. Creation of a work entails significant use of University personnel, funds, or facilities; or

d. Other arrangements are required by the University's contractual obligations; or

e. It is otherwise agreed upon in writing between the University and the creator of a work.

Exceptions to this policy may be granted by the Provost of the University or by his designees.

3. EXPLANATION OF TERMS

a. Copyright

(1) Copyrightable works - Under the federal copyright law, copyright subsists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Among others, these works include, but are not limited to, software, computer programs, programmed instructional material, and the like.

(2) Scope of copyright protection

(a) Definition of material protected by copyright laws - Copyright protection does not extend to any idea, process, concept, discovery, or the like but only to the work in which it may be embodied, illustrated, or explained. For example, a written description of a manufacturing process is copyrightable, but the copyright prevents only unauthorized copying of the description; the process described can be freely copied unless it enjoys some other protection, such as a patent.

(b) Rights of copyright owner - Subject to various exceptions and limitations provided for in the copyright law, the copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute copies by sale or otherwise, and display or perform the work publicly. Ownership of copyright is distinct from the ownership of any material object in which the work may be embodied. For example, if one purchases a videotape, one does not necessarily obtain the right to make a public showing for profit.

b. Works made for hire - Under the Copyright Act, "a work prepared by an employee within the scope of his or her employment" is a work for hire. This is a broad definition. Also, certain commissioned works are "works for hire" if the parties so agree in writing. The employer by law is the "author," and hence the owner, of the works for hire for copyright purposes. University ownership in a work for hire may be relinquished only through written agreement signed by an authorized official of the University. Such written release shall be granted upon request if the University clearly has no basis for claiming rights.

In interpreting the "work made for hire" clause, the University shall recognize the obligation of faculty members to publish scholarly works and shall follow the University's long-standing practices regarding copyrights and royalties (or other income) pertaining to works which result from author-initiated, individual effort. The copyright policy (Policy Manual, Policy No. 6-7) states that "In accordance with established custom at institutions of higher learning, copyright ownership of textbooks, manuscripts, nonprint materials, produced by the individual effort of the author, as well as any royalties therefrom, accrue to the benefit of the author." There are some exceptions and qualifications to this general rule which are given in the copyright and software policies respectively.

c. "Computer software" means a set of computer programs and the manuals or documents associated with these programs. "Program" is defined in the copyright law as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result" (Copyright Act, 94 Stat. 3015, 3028, amending 70 U.S.C. sections 101, 117).

4. ORIGINATOR'S RESPONSIBILITY

Much of the software generated at the University is of interest only to the originator or may be of wider interest for reasons of scholarship only. In such cases, the material may have no market potential, and a formal determination of rights is not required. Where there is a possibility of producing income from the software, the originator should notify the University Coordinator for Research (or other delegated University official) when the commercial potential becomes apparent. Such timely notice preserves the rights of the individual to the software in cases where the University has no equity. If further development of a computer program materially changes the circumstances governing the University's equity in software, the University Coordinator for Research should be notified.

To safeguard the individual's and University's interests in the software, a copyright notice should be placed on the software when it is distributed to others, whether or not the software seems to be marketable at that time.

5. ADMINISTRATIVE RESPONSIBILITY

The administration of the policy set forth in this document is the responsibility of the Provost of the University. The Provost, however, has delegated day-to-day administration to the University Coordinator for Research, Office of Research & Patents, with the understanding that no departures from the stated principles of this policy will be made without the Provost's prior concurrence.

6. PROCEDURES

Procedures to implement this policy shall be established and, as necessary, modified from time to time by the Provost or his designee.

Sufficient time will be allowed for public comment and review before any material modifications to these procedures are implemented. Such procedures and modifications shall be issued as (a) separate document(s) attached to the policy.

7. EFFECTIVE DATE

This policy becomes effective upon approval by the Board of Trustees of the University of Delaware. Any work initiated and disclosed to the Office of Research & Patents prior to the effective date will be governed by the appropriate policy in existence at that time.

UNIVERSITY OF DELAWARE

PROCEDURES FOR ADMINISTRATION OF UNIVERSITY POLICY ON COMPUTER SOFTWARE

1. General Principles

In keeping with the general aims and charter requirements of the University, the generation of computer software by faculty, staff, and students is strongly encouraged. Whenever possible, property rights in such material shall vest in the originator of the work. In some cases, such rights shall reside in the University. In either case, income derived from the work may be shared by the University and the originator depending on the circumstances.

It is now widely recognized that the University resources employed in the production of software may not be limited to the use of some job time, an office, a library, and a secretary. Computer facilities and other special equipment owned or leased by the University are often involved in the modern multimedia publication, and such work frequently requires release time, special funding, and the assistance of University-employed specialists. For such material, prepared with substantial or special University support, exclusive ownership of the product by the originator may be inequitable. There is a need at this time to establish both procedures and a policy that go beyond protection of the traditional faculty interests in scholarly production and that take account of the current U.S. copyright law. The procedures presented in this document will be followed in determining ownership and income rights related to software developed at the University.

2. Definitions

The following definitions apply to terms used in these procedures:

a. "Computer" means a device capable of accepting information, applying prescribed processes to the information, and supplying the results of those processes.

b. "Computer software" means a set of computer programs and the manuals or documents associated with the programs. "Program" is defined in the copyright law as "a set of statements to be used directly or indirectly in a computer in order to bring about a certain result."

c. "University personnel" means University faculty, staff, and students.

d. "Originator" means one or more persons contributing to the creation of computer software.

3. Determination of Rights

A large volume of software is being generated at the University, and a larger volume is expected in the future. Much of this material is of interest only to the originator or may be of wider interest for reasons of scholarship only. In either case, the material may have no market potential, and a formal determination of rights is not required. If any such material is to be supplied to others, it must be marked with a copyright notice before distribution to protect the interests of the originator and the University. Such marking will facilitate billing the recipients for nominal packaging and shipping costs, and will also preserve rights if the material later has market value. In the latter case, rights will be determined according to these procedures.

Rights in marketable software will be determined by the circumstances surrounding its creation. Generally the originator will be most familiar with these circumstances, and for that reason he or she should notify the University Coordinator for Research as early as possible, with particular attention to:

a. identifying the sponsor, if any, of the project or program;

b. stating whether the activity resulting in development of the software is within the originator's normal activities and responsibilities with respect to his or her University employment;

c. indicating the extent to which personnel support, software, equipment, or physical facilities provided by the University were used in the work which led to the software;

d. indicating whether the software was developed under terms of a consulting agreement between originator and client; and

e. noting the existence of any agreement between the originator and the University with respect to the software.

Based on the information supplied by the originator and such other relevant information as may be available, the University Coordinator for Research shall determine the extent to which the University has rights to the material by applying of the procedures of section 4, below.

If it is determined by the University Coordinator for Research that the University has rights in the software, the originator agrees to assign all right to, title to, and interest in said software to the University in consideration of the Policy on Computer Software and the compensation provided by his or her employment remuneration. The University Coordinator for Research will promptly determine whether it is appropriate to file

UNIVERSITY OF DELAWARE

PROCEDURES FOR ADMINISTRATION OF UNIVERSITY POLICY ON COMPUTER SOFTWARE

1. General Principles

In keeping with the general aims and charter requirements of the University, the generation of computer software by faculty, staff, and students is strongly encouraged. Whenever possible, property rights in such material shall vest in the originator of the work. In some cases, such rights shall reside in the University. In either case, income derived from the work may be shared by the University and the originator depending on the circumstances.

It is now widely recognized that the University resources employed in the production of software may not be limited to the use of some job time, an office, a library, and a secretary. Computer facilities and other special equipment owned or leased by the University are often involved in the modern multimedia publication, and such work frequently requires release time, special funding, and the assistance of University-employed specialists. For such material, prepared with substantial or special University support, exclusive ownership of the product by the originator may be inequitable. There is a need at this time to establish both procedures and a policy that go beyond protection of the traditional faculty interests in scholarly production and that take account of the current U.S. copyright law. The procedures presented in this document will be followed in determining ownership and income rights related to software developed at the University.

2. Definitions

The following definitions apply to terms used in these procedures:

a. "Computer" means a device capable of accepting information, applying prescribed processes to the information, and supplying the results of those processes.

b. "Computer software" means a set of computer programs and the manuals or documents associated with the programs. "Program" is defined in the copyright law as "a set of statements to be used directly or indirectly in a computer in order to bring about a certain result."

c. "University personnel" means University faculty, staff, and students.

d. "Originator" means one or more persons contributing to the creation of computer software.

3. Determination of Rights

A large volume of software is being generated at the University, and a larger volume is expected in the future. Much of this material is of interest only to the originator or may be of wider interest for reasons of scholarship only. In either case, the material may have no market potential, and a formal determination of rights is not required. If any such material is to be supplied to others, it must be marked with a copyright notice before distribution to protect the interests of the originator and the University. Such marking will facilitate billing the recipients for nominal packaging and shipping costs, and will also preserve rights if the material later has market value. In the latter case, rights will be determined according to these procedures.

Rights in marketable software will be determined by the circumstances surrounding its creation. Generally the originator will be most familiar with these circumstances, and for that reason he or she should notify the University Coordinator for Research as early as possible, with particular attention to:

a. identifying the sponsor, if any, of the project or program;

b. stating whether the activity resulting in development of the software is within the originator's normal activities and responsibilities with respect to his or her University employment;

c. indicating the extent to which personnel support, software, equipment, or physical facilities provided by the University were used in the work which led to the software;

d. indicating whether the software was developed under terms of a consulting agreement between originator and client; and

e. noting the existence of any agreement between the originator and the University with respect to the software.

Based on the information supplied by the originator and such other relevant information as may be available, the University Coordinator for Research shall determine the extent to which the University has rights to the material by applying of the procedures of section 4, below.

If it is determined by the University Coordinator for Research that the University has rights in the software, the originator agrees to assign all right to, title to, and interest in said software to the University in consideration of the Policy on Computer Software and the compensation provided by his or her employment remuneration. The University Coordinator for Research will promptly determine whether it is appropriate to file either a patent or a copyright application on the software and will initiate such action as required.

Software developed by University personnel under terms of consulting contracts falls within the provisions of this section 3. University personnel may not use University facilities for work related to consulting agreements without prior written approval of the appropriate Dean/Director. It is the responsibility of University personnel to advise potential consultation clients of their University obligations prior to entering into consulting agreements. (See Faculty Handbook, Sect. III-H, Outside Employment).

4. Rights Based on Categories of Work

a. Work Conducted Independently by University Personnel

Software that is created wholly at the expense of the originator and without use of University facilities, equipment, materials, or specialists is the property of the originator unless section 4-e applies. The originator of such work shall grant the University royalty-free rights to copy and use the work for its normal non-profit research and teaching activities. At the originator's request, the Provost will state in writing that the University has no interest in the software.

At the sole option of the originator and with the University's prior assent, such software may be assigned to the University.

b. Work Financed with Funds Administered by the University or Which has Involved the Significant Use of University Facilities, Equipment, Materials, or Specialists and in Which the University and the Originator are the Sole Parties in Interest

Such software shall be promptly evaluated by the University Coordinator for Research for copyrightability or patentability, and then:

(1) released to the originator if found not to be of interest to the University; or,

(2) if of interest, covered by patent in the name of the inventor or by statutory copyright in the name of the University by the University Coordinator for Research. The University Coordinator for Research shall thereafter attempt to bring the software into appropriate use internally, externally, or both to derive maximum benefits therefrom for all parties in interest and shall have sole responsibility for marketing the software. This responsibility may be delegated to or shared with the originator or other member of University personnel when appropriate. (See also section 4-e for treatment of works within the scope of the originator's employment.)

c. Work Financed Wholly or in Part by Government Funds

The University is obligated to report to the appropriate government agency all software derived from work which has had any financial support from the Government of the United States, for determination of the Government's rights and interests. This determination may result in:

(1) the Government deciding that the public interest requires that the software be disclosed in the open literature; or

(2) the Government acquiring and reserving to itself principal or exclusive rights, in which case exploitation of the software rests with the Government; or

(3) the Government releasing the software to the University, in which case the University shall follow the procedures of paragraph 4-b, above.

Irrespective of which of these alternatives is elected by the Government, the Government usually retains rights to a royalty-free, nonexclusive, irrevocable license throughout the world under any copyright or patent which may be issued on the software, or to free use of the software for Government purposes; and rights to the software granted by the University are subject to prior retained government rights. If the University releases the software to the originator, the release shall specify that the originator agrees to convey to the University such rights as the University may need to fulfill its obligation to the Government.

d. Work Financed Wholly or in Part by Industrial, Philanthropic, or Other Organizations, or by Individuals, Under Contracts or Written Agreements with the University

Rights with respect to software in this category are governed by the terms of the individual contracts or agreements, and the principal investigator is responsible for informing co-workers of their rights and obligations under such contracts or agreements before initiation of the work. Software which is not required to be assigned by contractual terms shall be processed by the University under the procedures of section 4-b, above.

e. Work Made for Hire

Public Law 94-553 (Oct. 19, 1976) Appendix I defines a "work made for hire" as "a work prepared by an employee within the scope of his or her employment," or as certain specially ordered or commissioned works covered by a written agreement. The law further states that such works are the property of the employer. It is clear that many works considered under sections 4-a and b, above, will fall within the scope of the originator's employment and will therefore be the property of the University unless released to the originator by a written document. Such written release shall be granted upon request if the University clearly has no basis for claiming rights. In such cases the University retains the royalty-free right to copy and use the work for its normal non-profit research and teaching activities.

In interpreting the "work made for hire" clause, the University shall recognize the obligation of faculty members to publish scholarly works and shall follow the University's long-standing practices regarding copyrights and royalties (or other income) pertaining to works which result from author-initiated, individual effort: "In accordance with established custom at institutions of higher learning, copyright ownership of textbooks, manuscripts, nonprint materials, produced by the individual effort of the author, as well as any royalties therefrom, accrue to the benefit of the author." (Policy Manual, Policy No. 6-7).

5. Arbitration of Disputes

If the University and the originator cannot agree with respect to any of their respective rights or obligations hereunder, such dispute shall be submitted for determination to an arbitration panel of three members chosen from the University community and consisting of a member named by the originator, a member named for the University by the Provost, and a chair selected by mutual agreement of these two nominees. The decision of a majority of this panel shall be final and binding upon both the originator and the University.

6. Distribution of Income

Income which is received by the University from the sale or licensing (leasing) of software in which the University has an interest (see section 4 above) shall be shared with the originator unless the University retains the entire right to and interest in the software. Sharing of income shall be governed by the following considerations:

a. Income received by the University from software covered by the Policy shall be used first to reimburse the University for all copyrighting and marketing costs. Income which exceeds reimbursable expenses shall be divided one-third to the originator, one-third to the unit, and one-third to the University, unless some other arrangement has been made by the parties in interest. Such an arrangement should be made as soon as commercial potential becomes apparent.

b. When software is developed under contract with an outside agency as provided in sections 4-c and d, the distribution of income shall be in accordance with the terms of the contract. In the event that any contract with an outside agency provides for the University to receive unrestricted funds from developed software, such funds shall be distributed as provided in 6-a.

c. If royalties or other income accrue under an agreement granting licenses for software developed independently by two or more originators, the distribution of income among the originators shall be determined by a University Committee, using the procedure of 6-a as a guide. This Committee, which is composed of the Provost, the University Coordinator for Research, and the appropriate Dean/Director, shall utilize legal, accounting, and scientific consultants as deemed necessary in making decisions. If one or more of the originators involved disagrees with the decision of the Committee, the matter shall be resolved by arbitration as provided in section 5.

d. The originator's share of income generated by software developed by the joint efforts of two or more originators shall be divided equally among them unless an agreement specifying a different distribution is filed with the University Coordinator for Research before work is started.

e. The University's and units' shares of income received under section 4 shall be used for research or educational purposes.

7. Other Procedures

a. Whenever software that is determined to be the property of the University is released to the originator, the University:

   (1) shall retain the royalty-free right to copy and use the software for its normal non-profit teaching and research purposes and

   (2) may claim a share in any income received by the originator, after the deduction of his or her expenses, as a condition of such release. Under this provision the University shall not be entitled to a share of income which would reduce the originator's share to an amount less than that provided for under section 6.

b. Whenever the University determines that it has no proprietary interest in software covered by the Policy, or whenever the University releases software to an originator, the originator agrees not to use the University, or the University's name, in the exploitation of such software without prior written approval by the University.

c. The originator agrees to execute all documents, including assignment of the software to the University or its designee, required for legal disposition of rights relative to such materials.

d. It is the originator's responsibility to provide the University with a mailing address through which he or she can be reached. This address, as well as any other communications made according to the procedures stated in this document, must be sent to the University Coordinator for Research. If the University is unable to reach the originator through this address and no forwarding address is provided, the originator waives the right to be notified.

e. The originator is required to affix the words "Copyright © 19__ by the University of Delaware. All rights reserved." to all copyrightable software to which the University has rights.

f. The originator warrants that all software he or she develops is his or her original work and is free from infringement of existing copyright. If the originator incorporates copyrighted materials in such software, he or she shall provide proof of release from the copyright holder prior to such inclusion. Further, the originator agrees to take no action or enter into any agreements or arrangements under which any other person or organization may develop rights in such software without the prior written approval of the University.

g. When rights to software are vested in the University, the University has the right to modify the software either for internal use or for licensing purposes when such modification shall be deemed necessary and when the originator is for any reason unable or unwilling to make such modifications within 90 (ninety) days of notification that modifications are necessary. In this event, the originator may request that one copy of the unmodified software be retained in the University's archival files.

h. When rights to software are vested in the University, the University has the right to have foreign-language versions prepared and copyrighted.

i. When two or more originators working at two or more institutions (one being the University of Delaware) contribute to a work, ownership and income distribution shall be determined by the terms of the agreement between the institutions, or if no agreement exists, by the procedures of section 8.

8. Other Situations

Applications for computers and requirements for software are steadily evolving and increasing. It is probable that not all situations which may arise are adequately covered in the foregoing procedures. In such cases the University Coordinator for Research, in consultation with the originator of the work in question and the appropriate Dean/Director, shall establish any required new or modified procedures. Such procedures shall become effective and shall be incorporated in this document upon approval by the Provost. (See section 6, Policy on Computer Software).

Some cases not clearly covered by these procedures may require ad hoc treatment. (In these situations adding the procedures to this document may not be necessary.) As an example, books which include software will clearly have to be treated as special cases. Determination of copyright ownership and income distribution will depend on such factors as the nature of the work, i.e., textbook, research, etc.; the relative significance of text vs. software; the originality of the software; and the utility of the software independent of the text.

Other works or systems which include software may require similar ad hoc treatment. In all such cases the ownership and income distribution factors shall be determined by the University Coordinator for Research in consultation with the originator and the appropriate Dean/Director.

APPENDIX I

Excerpts from Public Law 94-553 - Oct. 19, 1976

(Title 17, U.S. Code, Copyrights)

17 USC 101. §101 Definitions

As used in this title, the following terms and their variant forms mean the following:

A "work made for hire" is--

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

17 USC 201. §201 Ownership of copyright

(a) INITIAL OWNERSHIP. -- Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.

(b) WORKS MADE FOR HIRE. -- In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

UNIVERSITY OF MISSOURI

Revised May 4, 1984

Copyright Regulations: University-Sponsored Educational Materials

(8.0303, Board of Curators' *Collected Rules & Regulations)*

Introduction

University participation in the development of educational materials promises to improve the quality, effectiveness, and efficiency of student learning. However, this participation also raises questions concerning the ownership and use of materials in which the University has become an active and intentional partner through the investment of resources—personnel, time, materials, and equipment. University policies are needed to govern the ownership, internal use, external use, and rights to income generated by these University-sponsored materials.

This policy has a dual purpose: 1) to stimulate faculty interest in the production and sharing of educational materials; and 2) to clarify and protect the respective rights of faculty, students, and the University by defining "University-sponsored" educational materials and by establishing policies governing their ownership, use, and rights to income produced.

.01 Coverage of Policy

This policy governs only the ownership and use of University-sponsored educational materials, as defined in .02. The policy does not affect the traditionally accepted practice that faculty members have personal ownership of books, workbooks, study guides, and similar materials which were not directly commissioned by the University and the preparation of which was not supported by any substantial University resources (see .02.0201.03 below).

.02 Definition of University-Sponsored Educational Materials

.0201 Educational materials are University-sponsored if:

- .01 the University has specifically commissioned in writing the author or producer to develop the materials and for their production has provided extra compensation, released time from regular job responsibilities, or a leave at more than 50% of regular salary; or
- .02 the production of the materials is a specific responsibility of the position for which the employee is hired; or
- .03 substantial University resources have been used in their development. Limited secretarial support, uses of the library for which special charges are not normally made, and the staff member's own time except as covered by .01 and .02 above shall not be considered substantial University resources.

.0202 If any of the conditions described in .0201 are present, the types of educational materials to which this policy applies include but are not necessarily limited to:

- .01 Video and audio recordings.
- .02 Study guides, tests, syllabi, bibliographies, and texts.
- .03 Films, film strips, charts, transparencies, and other visual aids.
- .04 Programmed instructional materials.
- .05 Live video and audio broadcasts.
- .06 Computer software as defined below:
  1) "computer program" means a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result;
  2) "program description" is a complete procedural presentation in verbal, schematic or other form, in sufficient detail to determine a set of instructions constituting a corresponding computer program;
  3) "documentation" refers to any material, other than a computer program or a program description, created for aiding the understanding or application of a computer program, for example, problem descriptions and user instructions;
  4) "integrated circuit" is a system of electrical circuitry, containing a large number of component parts of extremely small dimensions and designed in accordance with a particular computer program so that it can serve as a steering component in a machine having information-processing capabilities. Since layout of an integrated circuit usually is determined by software, the protection of the integrated circuit indirectly amounts to production of the software. (It should be noted that patent protection might be available for integrated circuits.)
  5) "data base" means a collection of original data elements stored on media accessible by computer software. Computer data bases residing in the "public domain" are not eligible for copyright.
- .07 Other forms used for communicating information, including the results of creative efforts, to specialized audiences or the general public.

.0203 Educational materials to which this policy applies, and devices for the display of these materials, may also be subject to University Patent Regulations.

.03 Interpretation and Administration of Policy

.0301 The President of the University shall appoint a Committee on University-Sponsored Educational Materials, representing the four campuses. A majority of the Committee shall be members of the teaching faculty of the University. Each campus shall have at least one member of the Committee who shall be a member of the teaching faculty.

.0302 The responsibility for initial interpretation and decision on the application of this policy is vested in the appropriate departmental chair or immediate administrative supervisor upon request of the author, or developer, or their personal representatives. If agreement is not reached, then the issue is to be forwarded to the next appropriate administrator(s) for consideration and resolution, e.g., from Chair to Dean, from Dean to Provost or Vice Chancellor, from Provost or Vice Chancellor to Chancellor. If an agreement is not reached between the author, developer or his/her personal representative, and any of the appropriate campus administrators, then the issue shall be referred to the Committee on University-

Sponsored Educational Materials. After consideration of the issue, this Committee is to make a recommendation concerning its resolution to the Vice President for Academic Affairs. The Vice President then shall make a recommendation to the President, who will make a final decision in regard to the issue. No interpretation or application of this policy shall serve as a precedent in later cases, unless it has been approved by the president.

.04 Ownership

Ownership of University-sponsored educational materials shall be vested in The Curators of the University of Missouri, a public corporation, subject to the conditions set forth in this statement of policy. Materials determined to be University-sponsored shall display the following symbol and notice.

© Copyright (year) by The Curators of the University of Missouri, a public corporation

If the registration of the copyright is deemed appropriate by the author(s) and department(s), the application for registration with the United States Copyright Office shall be processed through the campus business office.

The University's copyright shall not affect the author's right to use the contents of her/his materials in other forms, so long as the University's copyright is recognized and protected.

.05 Policy on Use of Materials

.0501 Use of University-sponsored materials by units of the University shall be subject to the following conditions:

- .01 Each instance of use internal to the University requires approval of the unit primarily responsible for the materials.
- .02 As long as the author or producer of University-sponsored materials remains a member of the staff of the University:
  - .0201 The author's approval shall be required for each instance of use of the materials internal to the University other than the use for which the materials were developed.
  - .0202 The author may require revision of the materials prior to any instance of internal University use other than the use for which the materials were developed. If the required revision is not accepted by the University, the author may ask that the materials be withdrawn from use. If materials so withdrawn have been copyrighted, the University may assign its respective rights in such copyright to the author, subject to a written agreement between the University and the author relating to further internal or external use of the materials and division of income from any subsequent use of the materials.
  - .0203 If the material requires continuous maintenance and updating, the author will have the obligation of such maintenance unless otherwise specified. If the tasks involved in this maintenance lead to conflict, the outlined procedure in Paragraph .0202, above, will become applicable.
- .03 In the event that the author should cease employment with the University, the University shall retain the right to make internal use of University-sponsored educational materials without the author's or producer's consent.
- .04 Licensing or sale of University-sponsored educational materials for external use shall be preceded by a written agreement between the University and author or producer specifying the conditions of use, and including provisions protecting the right of the author or producer to revise the materials periodically, or to withdraw them from use in the event revision is not made.

.06 Payments to the Author or Producer for Production and Use

.0601 Payment by the University to the author or producer of University-sponsored educational materials for their production or internal use shall normally be:

- .01 Compensation for production.
  - .0101 Compensation for production normally will take place through the reduction of the author's or producer's normal work load.
  - .0102 Staff members on nine-month academic appointments may receive summer grants and salaries for the production of educational materials.
  - .0103 Occasionally, payment may be made on an extra-compensation basis. Such payments shall follow the current University policy on extra compensation.

.02 Compensation for internal use and revision.

.0201 The author or producer of University-sponsored educational materials shall not receive compensation, other than regular compensation from the University, for the normal internal use of these materials, except when such compensation is negotiated at the time of initial commission.

.0202 If the use of materials by units of the University other than the unit to which the author or producer belongs involves an extension of the normal duties of the author or producer in supervising use or managing revisions, and if appropriate release time cannot be budgeted as part of the regular assigned instructional duties of the author or producer, the appropriate instruction unit of the University may recommend payment on an extra-compensation basis to the author or producer.

.0602 The University shall license the external use or sale of University-sponsored educational materials only after a written agreement with the author or producer has been approved by the President (or her/his designate), specifying the division of net income (net after sales and distribution costs) between the author or producer and the University. The following general principles shall be reflected in the agreement:

.01 Fifty (50) per cent of the net income derived from the external use of University-sponsored educational materials shall go to the departments or units responsible for their production, and fifty (50) per cent to the authors or producers.

.02 The University may enter into agreements for dividing the net income on some other basis, if special circumstances attend the production or use of these materials.

.07 Production and Use Involving Non-University Agencies

The University may administer funds provided by non-University agencies (such as the Federal Government) under contract or grant to pay for staff time, services, or materials incidental to the production of educational materials. In such cases, the University may enter into agreements with such agencies recognizing their rights, in whole or in part, to the ownership of the materials produced and to the net income from their use. In negotiating agreements with non-University agencies for the production of educational materials, it shall be the policy of the University that the author or producer of the materials is entitled to a reasonable share of the income from use, if any, and to reasonable participation in determining the conditions of use. The University shall inform staff members applying for support from non-University agencies for the production of educational materials as to the rights reserved to such agencies under the agreements required between these agencies and the University.

.08 Protection and Liability

.0801 Protection. The Committee on University-Sponsored Educational Materials shall investigate allegations of unauthorized use or copyright infringement of University-sponsored educational materials and shall recommend appropriate action. If the University decides not to act, the author or producer may initiate action and the University shall assign to her/him such rights as are necessary for her/him to pursue redress. If such action is started by the University, acting alone or in concert with the author or producer, all costs of such action (including attorney's fees) shall be borne by the University. All proceeds in excess of such costs shall be shared equally by the University and the author or producer, or if there is an agreement as provided in .0602 in accordance with that agreement.

.0802 Liability. Before any use is made of University-sponsored educational materials, the author or producer shall certify in writing that, to the best of her/his knowledge, the materials do not infringe on any existing copyright or other legal rights. The author or producer may seek the advice of University legal counsel.

Selected Reading List

Selected Reading List

Many books and articles focus on copyright issues affecting universities. Citations to such works appear in standard catalogs and indexes. The following bibliography is a sample of brochures, booklets, and other publications from professional organizations with interests in copyright issues affecting universities. Readers may contact the organizations directly for the availability and cost of each item.

The Copyright Law and the Health Sciences Librarian. Medical Library Association [919 North Michigan Avenue, Chicago, IL 60611], 1978.

Copyrights at Colleges and Universities. National Association of College and University Business Officers [One Dupont Circle, Suite 500, Washington, D.C. 20036], 1980. Also available through ERIC, ED 216 570.

Duchesne, R.M., D.A. Guenter, and S. Tsai. Ownership of Machine-Readable Bibliographic Data. National Library of Canada [Publications Section, 395 Wellington Street, Ottawa K1A 0N4], 1983.

Helm, Virginia. What Educators Should Know About Copyright. Fastback Series, No. 233. Phi Delta Kappa [Eighth and Union, Box 789, Bloomington, IN 47402], 1986.

Holbert, Sue E. Archives & Manuscripts: Reference & Access. Society of American Archivists [600 S. Federal, Suite 504, Chicago, IL 60605], 1977.

Intellectual Property Series. National Council of University Research Administrators [One Dupont Circle, Suite 618, Washington, D.C. 20036], 1984. Also available through ERIC, ED 272 084.

Library Photocopying and the U.S. Copyright Law of 1976: An Overview for Librarians and Their Counsel. Special Libraries Association [1700 Eighteenth Street N.W., Washington, D.C. 20009], 1977.

Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use. American Library Association [50 East Huron Street, Chicago, IL 60611], 1982. Also published at: College & Research Libraries News 43 (April 1982): 127-131.

Peterson, Gary M. and Trudy Huskamp Peterson. Archives & Manuscripts: Law. Society of American Archivists [600 S. Federal, Suite 504, Chicago, IL 60605], 1985.

Photocopying by Academic, Public And Nonprofit Research Libraries. Association of American Publishers, Inc. [2005 Massachusetts Avenue N.W., Washington, D.C. 30036] and Authors League of America, Inc. [234 West 44th Street, New York, NY 10036], 1978.

Reed, Mary Hutchings and Debra Stanek. "Library and Classroom Use of Copyrighted Videotapes and Computer Software." American Libraries 17 (February 1986): supplement, pp. A-D.

Reproduction of Copyrighted Works by Educators and Librarians. Circular R21. U.S. Copyright Office [Library of Congress, Washington, D.C. 20559], 1978.

Software Use and the Law: A Guide for Individuals, Corporations, Educational Institutions, and User Groups. Software Publishers Association [1111 19th Street N.W., Suite 1200, Washington, D.C. 20036], no date.

Steinhilber, August W. *Copyright Law: A Guide for Public Schools.* National School Boards Association [1680 Duke Street, Arlington, VA 22314], 1986.

Thou Shalt Not Dupe. ADAPSO [1300 North 17th Street, Suite 300, Arlington, VA 22209], 1984.

The United States Copyright Law: A Practical Outline. Music Publishers Association [130 West 57th Street, New York, NY 10019], no date.

The United States Copyright Law: A guide for music educators. Music Educators National Conference [1902 Association Drive, Reston, VA 22091], Music Publishers Association of the United States [130 West 57th Street, New York, NY 10019], Music Teachers National Association [2113 Carew Tower, Cincinnati, OH 45202], National Music Publishers' Association, Inc. [205 East 42nd Street, New York, NY 10017], and National Association of Schools of Music [11250 Roger Bacon Drive, No. 5, Reston, VA 22090], no date.

Using Software: A Guide to the Ethical and Legal Use of Software for Members of the Academic Community. EDUCOM Software Initiative [P.O. Box 364, Princeton, NJ 08540] and ADAPSO [1300 North 17th Street, Suite 300, Arlington, VA 22209], 1987.

Vlcek, Charles W. *Copyright Policy Development: A Resource Book for Educators.* Copyright Information Bulletin Series, No. 2. Copyright Information Services [P.O. Box 1460, Friday Harbor, WA 98250], 1987.